

DATED

**AGREEMENT FOR LICENCE TO OCCUPY WITH REFURBISHMENT WORKS AND EARLY
ACCESS**

relating to

**The Mental Health Hub at Acomb Garth Community Care Centre, 2 Oak Rise, Acomb, York
YO24 4LJ**

between

(1) Nimbuscare Limited

and

(2) The Council of the City of York

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This agreement is dated [DATE]

Parties

- (1) Nimbuscare Limited incorporated and registered in England and Wales with company 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**)

BACKGROUND

- (A) The Licensor has a lease of property at Acomb Garth Community Care Centre, 2 Oak Rise, Acomb, York YO24 4LJ and has agreed to grant the Licensee a licence to occupy part of the property on the terms contained in this agreement.
- (B) The licence to occupy shall contain an agreement between the Licensor and the Licensee that the provisions of sections 24-28 of the Landlord and Tenant Act 1954 will be excluded in relation to the licence to occupy.
- (C) The Licensor has agreed to [procure] that certain works undertaken to the property before the grant of the licence to occupy.
- (D) The Licensee wishes to take early occupation of [another part of Acomb Garth Community Care Centre, 2 Oak Rise, Acomb, York YO24 4LJ] and the Licensor has agreed to allow the Licensee to occupy the another part of the property as a licensee to in the period between completion of the refurbishment works and the grant of the licence to occupy.

Agreed terms

1. Interpretation

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

1.1 Definitions:

[Approved Documents: all plans, specifications, drawings, engineering calculations, bills of quantity and other data for the Works in the agreed form annexed to this agreement including (where applicable):

- a) any variations or amendments that may be agreed by the Licensor and the Licensee from time to time in accordance with clause 5.4; and
- b) any minor variations permitted under clause 5.5.]

[Building Contract]: a building contract for the Works [[dated [DATE]] between the Head Landlord and the Building Contractor [a copy of which is annexed to this agreement] **OR** to be entered into [as a deed] between the Head Landlord and the Building Contractor in the agreed form annexed to this agreement and incorporating such amendments as may be approved in writing by the Licensee (such approval not to be unreasonably withheld or delayed)] or such other building contract with similar effect as may be approved by the Licensee (such approval not to be unreasonably withheld or delayed)].

Building Contractor: [Whitaker & Leach or such other building contractor as the Head Landlord appoints as the building contractor for the purposes of the Works]

CDM Regulations: the Construction (Design and Management) Regulations 2015 (S/ 2015/51).

Certificate of Making Good: the Contract Administrator's certificate or written statement issued in accordance with the Building Contract certifying that any defects, shrinkages or faults appearing in the Works during the Rectification Period and for which the Building Contractor was responsible under the Building Contract have been made good.

[Collateral Warranties]: deeds of collateral warranty from the parties identified in the relevant annex to this agreement [together with any replacement party that may from time to time be appointed by the Licensor or the Building Contractor], such deeds to be in the agreed forms annexed to this agreement [with such amendments as may be approved by the Licensee (such approval not to be unreasonably withheld)].]

Condition: any one of the Part 1 Conditions.

Contract Administrator: [NAME] of [ADDRESS] or such other person as may be appointed as a replacement contract administrator for the time being by the Licensor in relation to this agreement and the Building Contract.

Contract Rate: [4%] per annum above the base rate from time to time of [Barclays Bank Plc].

Electronic Payment: payment by electronic means in same day cleared funds from an account held in the name of the Licensor's Conveyancer or Licensee's Conveyancer (as applicable) at a clearing bank to an account in the name of the Licensee's Conveyancer or Licensor's Conveyancer (as applicable).

[Energy Performance Certificate]: a certificate as defined in regulation 2(1) of the Energy Performance of Buildings (England and Wales) Regulations 2012 (S/ 2012/3118).]

Event of Default: any of the events set out in clause 15.1.

Head Landlord: [X]

Licensor's Conveyancer: [NAME, ADDRESS, [[FAX NUMBER],] [[DX NUMBER],] REFERENCE] [or any other conveyancer whose details have been given by notice from time to time by the Licensor to the Licensee].

[Licence Fee: the [initial] fee of £[FIGURE] per annum [(subject to review)] exclusive of VAT.]

Licence Fee Commencement Date: [the Practical Completion Date **OR** [NUMBER] [days **OR** weeks **OR** months] after the Practical Completion Date.]

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

Licence to Occupy: a licence to occupy in the agreed form annexed to this agreement [subject only to any minor amendments necessitated by any variations made to the Approved Documents under clause 5.4 or clause 5.5].

Licence to Occupy Completion Date: the day that is [NUMBER] working days after the Practical Completion Date.

[Licence for Alterations: a licence between the Licensor and Licensee in the agreed form annexed to this agreement.]

Licence Period: the period from but excluding the Practical Completion Date until the earlier of completion of the Licence to Occupy and termination of this agreement.

Long Stop Date: [September 2025].

LTA 1954: Landlord and Tenant Act 1954.

Part 1 Conditions: part 1 of the Standard Commercial Property Conditions (Third Edition - 2018 Revision).

Part 2 Conditions: part 2 of the Standard Commercial Property Conditions (Third Edition - 2018 Revision).

[Planning Permission: the [detailed **OR** outline] planning permission dated [DATE] from the [NAME] Council under reference [NUMBER] together with all requisite approvals already issued in connection with it and any waivers, relaxations or variations of any of its terms.]

[Practical Completion Certificate: the Contract Administrator's certificate or written statement issued in accordance with the Building Contract certifying that the Works are practically complete according to the terms of the Building Contract and setting out the date on which practical completion occurred.]

Practical Completion Date: the date stated in the Practical Completion Certificate.

Property: the property at [Acomb Garth Community Care Centre, 2 Oak Rise, Acomb, York YO24 4LJ] as more particularly defined in the Licence to Occupy.

[Recommendation Report : a report as defined in regulation 4 of the Energy Performance of Buildings (England and Wales) Regulations 2012 (SI 2012/3118).]

Rectification Period: the defects liability period or rectification period for the making good of defects, shrinkages or other faults in the Works under the Building Contract.

Requisite Consents: [the Reserved Matters,] building regulation approvals, by-law approvals, and any other consents, licences and authorisations required from any competent authority, statutory undertaker or person for the carrying out of the Works.

[Reserved Matters : all matters remaining to be approved under the terms of the Planning Permission.]

Target Date: [DATE] (as may be extended in accordance with clause 5.2).

Licensee's Conveyancer: [NAME, ADDRESS, [[FAX NUMBER],] [[DX NUMBER],] REFERENCE] [or any other conveyancer whose details have been given by notice from time to time by the Licensee to the Licensor].

Licensee's Surveyor: [NAME, ADDRESS, FAX NUMBER, REFERENCE] [or any other surveyor whose details may be given in writing from time to time by the Licensee to the Licensor].

VAT: value added tax [or any equivalent tax] chargeable in the UK.

Works: the works to be procured by the Licensor of [BRIEF DESCRIPTION OF WORKS] at the Property before the grant of the Licence to Occupy as shown in the Approved Documents.

Written Replies: [subject to clause 1.18,]are any:

- a) written replies that the Licensor's Conveyancer has given prior to exchange of this agreement to any written enquiries raised by the Licensee's Conveyancer; or
- b) written replies to written enquiries given prior to exchange of this agreement by the Licensor's Conveyancer to the Licensee's Conveyancer.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender includes a reference to the other genders.

- 1.8 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 A reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.10 A reference to **this agreement** or to any other agreement or document referred to in this agreement is a reference to this agreement or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.
- 1.11 Unless the context otherwise requires, references to clauses, Schedules and Annexes are to the clauses, Schedules and Annexes of this agreement 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 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.14 Unless this agreement otherwise expressly provides, a reference to the **Property** or the **Works** is to the whole and any part of them.
- 1.15 [Any reference to the Licensor's consent or approval being required is to a consent or approval in writing which must be obtained before the relevant act is taken or event occurs.]
- 1.16 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
- 1.17 [Except in relation to clause 1.18, a reference **OR** A reference] to **writing** or **written** [includes fax but not email **OR** excludes fax and email].
- 1.18 [For the purposes of the definition of **Written Replies**, **written replies** and **written enquiries** include:
- (a) any pre-contract enquiries and any replies to pre-contract enquiries that are requested or given by reference to the [THE STANDARD FORM OF ENQUIRIES USED, INCLUDING THE EDITION] [and include enquiries or replies so requested or given by email]; and

- (b) the following pre-contract enquiries and replies that were sent or received by email: [EMAILS].]

2. Agreement for Licence to Occupy

- 2.1 In consideration of the Licensee's obligations under this agreement, the Licensors shall grant to the Licensee and the Licensee shall accept from the Licensors the Licence to Occupy on the terms set out in this agreement. No purchase price, premium, or deposit is payable.
- 2.2 Conditions 1.4, 3.2 and 9.8.3 do not apply to this agreement.

3. Timetable for engrossments

- 3.1 The Licensors' Conveyancer shall send the engrossed counterpart Licence to Occupy to the Licensee's Conveyancer by [NUMBER] working days after the Practical Completion Date.
- 3.2 Condition 11.2.5 does not apply to this agreement.
- 3.3 Condition 11.2.6 is amended so that reference to seller is reference to the Licensors' Conveyancer.

4. Exclusion of security of tenure

- 4.1 The parties confirm that:
 - (a) the Licensors served a notice on the Licensee, as required by section 38A(3)(a) of the LTA 1954 and which applies to the tenancy to be created by the Licence to Occupy, before this agreement was entered into; and
 - (b) [the Licensee **OR** [NAME OF DECLARANT], who was duly authorised by the Licensee to do so], made a [statutory] declaration dated [DATE] in accordance with the requirements of section 38A(3)(b) of the LTA 1954.

5. Works

- 5.1 The Licensors shall procure that the Head Landlord obtains the Requisite Consents in respect of the Works.
- 5.2 [The Licensors shall procure that the Practical Completion Date occurs by the Target Date which shall be extended commensurate with any extensions of time:
 - (a) allowed by the Contract Administrator under the terms of the Building Contract; and/or

- (b) certified by the Contract Administrator as being fair and reasonable, having regard to the delay in question, where completion of the Works is delayed due to an event or cause that is beyond the Head Landlord's reasonable control.]

5.3 The Licensor shall procure that the Works are carried out:

- (a) with due diligence and in a good and workmanlike manner;
- (b) using only good quality materials and well-maintained plant and equipment;
- (c) in accordance with this agreement, the Approved Documents, [the Planning Permission] and the Requisite Consents in respect of the Works;
- (d) in accordance with all statutory or other legal requirements and the recommendations or requirements of the local authority or statutory undertakings;
- (e) in compliance with all relevant British Standards, codes of practices and good building practice; and
- (f) by selecting and using materials so as to avoid known hazards to the health and safety of any person and to ensure the long term integrity of the Property.

5.4 The Licensor shall not, (subject to clause 5.5), vary, alter, add to or remove anything from the Approved Documents without the Licensee's consent (such consent not to be unreasonably withheld or delayed).

5.5 [The Licensor may make minor variations to the Approved Documents without the Licensee's consent provided that:

- (a) the variations are insubstantial and immaterial;
- (b) the variations are in accordance with [the Planning Permission,] the Requisite Consents in respect of the Works and any statutory requirements;
- (c) any substitute materials used are of an equal or better quality and suitability to those originally specified;
- (d) the variations do not delay the completion of the Works;
- (e) the Licensor informs the Licensee of the variations within a reasonable time; and
- (f) [the variations are required by any local or competent authority or statutory undertaking as a condition of the grant or continuance of any of the Requisite Consents in respect of the Works.]

6. [Practical Completion and Rectification Period]

- 6.1 The Licensor shall procure that the terms of the Contract Administrator's professional appointment require the Contract Administrator to act impartially when exercising the power to issue certificates and award extensions of time under the Building Contract and this agreement.
- 6.2 The Licensor shall use reasonable endeavours to procure that the Contract Administrator:
- (a) gives at least [5] working days' notice to the Licensee of the Contract Administrator's intention to inspect the Works for the purpose of issuing the Practical Completion Certificate and allows the Licensee and the Licensee's Surveyor to attend the inspection and make representations either during the inspection or in writing immediately thereafter; and
 - (b) without fettering the discretion of the Contract Administrator in carrying out duties under the Building Contract, takes proper account of any representations that are made in accordance with clause 6.2(a) when considering whether to issue the Practical Completion Certificate in accordance with the terms of the Building Contract.
- 6.3 The Licensor shall use reasonable endeavours to procure that the Contract Administrator gives a copy of the Practical Completion Certificate to the Licensee as soon as practicable after its issue [together with a copy of any accompanying snagging list].
- 6.4 The issue of the Practical Completion Certificate shall be conclusive evidence binding on the parties that the Works have been completed in accordance with the terms of this agreement, subject to the Licensor's obligations during the Rectification Period.
- 6.5 [The Licensor shall [procure] that the Head Landlord enforces the Building Contractor's obligations under the Building Contract to remedy any defects, shrinkages or faults appearing in the Works during the Rectification Period.]
- 6.6 [During the Rectification Period, the Licensee or the Licensee's Surveyor may make written representations to the [Contract Administrator] identifying defects, shrinkages or faults in the Works which the Building Contractor is obliged to remedy in accordance with the Building Contract. Without fettering the discretion of the Contract Administrator in carrying out duties under the Building Contract, the Licensor shall use reasonable endeavours to ensure that the Contract Administrator takes proper account of any such representations.]

6.7 [The Licensors shall use reasonable endeavours to procure that the Contract Administrator:

- (a) gives at least [5] working days' notice to the Licensee of the Contract Administrator's intention to inspect the Works for the purpose of issuing the Certificate of Making Good and allows the Licensee and the Licensee's Surveyor to attend the inspection and make representations either during the inspection or in writing immediately thereafter; and
- (b) without fettering the discretion of the Contract Administrator in carrying out duties under the Building Contract, takes proper account of any representations that are made in accordance with clause 6.7(a) when considering whether to issue the Certificate of Making Good in accordance with the terms of the Building Contract.]

6.8 The Licensors shall use reasonable endeavours to procure that the Contract Administrator gives a copy of the Certificate of Making Good to the Licensee as soon as practicable after its issue.

6.9 [The Licensors shall use [best **OR** [all] reasonable] endeavours to procure the grant of the Collateral Warranties in favour of the Licensee [prior to **OR** on or before] the Licence to Occupy Completion Date.] If the Licensors has not procured the grant of the Collateral Warranties in favour of the Licensee on or before the Licence to Occupy Completion Date, the Licensors shall not be deemed to be in default and shall not be deemed to not be ready, able and willing to complete because the Licensors has not procured the grant of the Collateral Warranties in favour of the Licensee on or before the Licence to Occupy Completion Date and the Licensee shall not be entitled to give the Licensors notice to complete for that reason.]

7. [Long Stop Date

If the Practical Completion Date has not occurred by 4.00 pm on the Long Stop Date, the Licensee may at any time after the Long Stop Date (but before the Practical Completion Date), give written notice to the Licensors, unless the Practical Completion Date occurs within [[20] **OR** [SPECIFY]] working days of the receipt of that notice (time being of the essence), it may terminate this agreement. If the Practical Completion Date does not occur within [[20] **OR** [SPECIFY]] working days of receipt of that notice then the Licensee may, by further written notice, terminate this agreement with immediate effect.]

8. [Insurance

8.1 From the date of this agreement until the Practical Completion Date, the Licensors shall insure or shall procure that the Building Contractor insures the Works, the Property and all plant and unfixed materials and goods delivered to or placed on or adjacent to the

Property and intended for incorporation in the Works against all perils resulting in loss or damage thereto on customary contractors' all risks terms:

- (a) in the joint names of the Licensor and the Building Contractor; and
- (b) for not less than their full reinstatement value (taking into account the progress of the Works) together with all site clearance and professional fees incurred in connection with such reinstatement[. **OR** ;]

[and if insurance is taken out in compliance with clause 6.7 and insurance options A, B or C of Schedule 3 to the Building Contract the Licensor shall be deemed to have complied with this obligation.]

- 8.2 In the event of any loss or damage occurring before the Practical Completion Date to the Works, the Property, plant, materials or goods so insured, the Licensor shall procure that their reinstatement or replacement is carried out diligently and with all reasonable speed. The Licensor shall apply the proceeds of the insurance towards such reinstatement or replacement and shall make good any deficiency out of the Licensor's own funds.
- 8.3 The Licensor shall maintain, or procure that the Building Contractor maintains, insurance in respect of injury to or death of any person or loss or damage to any real or personal property for an indemnity of not less than £[AMOUNT] for any one occurrence or series of occurrences arising out of the same event. Such insurance shall be maintained from the date of this agreement until the end of the Rectification Period.
- 8.4 The Licensor and the Licensee mutually agree not to do or permit anything to be done, or omit to do or permit any omission, that they are aware, or that a reasonable person would be aware, might render any insurance policy required by this clause 8 void or voidable.
- 8.5 Conditions 8.1, 8.2.1, 8.2.2, 8.2.3, 8.2.4(b), 8.2.5(b) and 8.2.7 do not apply to this agreement.]

9. [Damage after Practical Completion]

- 9.1 The Licensee shall not be entitled to refuse to complete or to delay completion of the grant of the Licence to Occupy due to any event occurring after the Practical Completion Date that results in:
 - (a) any damage to the Property or any part of it; or
 - (b) any damage to the means of access to the Property; or
 - (c) any deterioration in the Property's condition.
- 9.2 The provisions in the Licence to Occupy relating to insurance of the Property shall apply from the Practical Completion Date.]

10. [Conditions]

- 10.1 The Part 1 Conditions are incorporated in this agreement, in so far as they:
- (a) are applicable to the grant of a [Lease];
 - (b) are not inconsistent with the other clauses in this agreement; and
 - (c) have not been modified or excluded by any of the other clauses in this agreement.
- 10.2 The terms used in this agreement have the same meaning when used in the Part 1 Conditions.
- 10.3 The Part 2 Conditions are not incorporated in this agreement.
- 10.4 The following Conditions are amended:
- (a) Condition 1.1.1(d) so that reference to completion date in Condition 1.1.1(d) is to the [Licence to Occupy] Completion Date as defined by this agreement.
 - (b) Condition 1.1.1(e) so that reference to contract rate in Condition 1.1.1(e) is to the Contract Rate as defined by this agreement.
 - (c) Condition 1.1.1(o) so that reference to VAT in Condition 1.1.1(o) is to VAT as defined by this agreement.
- 10.5 Condition 1.1.4(a) does not apply to this agreement.
- 10.6 Condition 9.1.1 is amended so that the words "completion date is twenty working days after the date of completion but" are deleted.
- 10.7 Condition 11.2.2 is amended to include the words: "(d) "transfer" includes the grant of a [Licence to Occupy]."

11. Licensee's occupation prior to the grant of the Licence to Occupy

- 11.1 During the Licence Period the Licensee is entitled to occupy [the Property] for the purpose of [X].
- 11.2 This agreement does not operate as a demise of the Property and during the Licence Period:
- (a) any occupation of the Property by the Licensee is by way of licence only;
 - (b) [the parties shall observe and perform their respective obligations imposed by the covenants and conditions in the Licence to Occupy (to the extent that they

are not inconsistent with the other provisions of this agreement) as if the Licence to Occupy had been completed on the Practical Completion Date;]

- (c) [the Licensor shall have the same rights and remedies in respect of any breach of the obligations imposed on the Licensee by the covenants and conditions in the Licence to Occupy as if the Licence to Occupy had been completed on the Practical Completion Date; and]
- (d) [the Licensee shall pay to the Licensor [by way of licence fees sums (if any) equal to the [X] that would be payable by the Licensee under the Licence to Occupy at the same times and in the same manner as if the Licence to Occupy had been granted on the Practical Completion Date.]

11.3 [The parties agree that any licence fees paid by the Licensee pursuant to clause 11.2(d) shall be taken into account when calculating the rents payable under the Licence to Occupy for the same period following completion of the Licence to Occupy.]

12. [Deducing title

12.1 The Licensor's leasehold title to the Property has been deduced to the Licensee's Conveyancer before the date of this agreement.

12.2 The Licensee is not entitled to raise any objection, enquiry or requisition in relation to the Licensor's title.

12.3 Conditions 7.1, 7.2, 7.3, 7.4.2, 11.2.4, and 11.3 do not apply to this agreement.]

13. [Title guarantee

13.1 The Licensor shall grant the Licence to Occupy with full title guarantee.

13.2 Conditions 7.6.2 and 7.6.4 do not apply to this agreement.

13.3 Condition 12 does not apply to this agreement.]

14. Matters affecting the Property

14.1 The Licensor shall grant the Licence to Occupy to the Licensee free from encumbrances other than:

- (a) [any matters, other than financial charges, contained or referred to in the entries or records made in registers maintained by [HM Land Registry as at [DATE AND TIME OF OFFICIAL COPIES] under title number [NUMBER]] [and] [the Land Charges Department of HM Land Registry as at [DATE OF SEARCH];]
- (b) all matters contained or referred to in the Licence to Occupy;

- (c) any matters discoverable by inspection of the Property before the date of this agreement;
 - (d) any matters which the Licenser does not and could not reasonably know about;
 - (e) any matters, other than financial charges, disclosed or which would have been disclosed by the searches and enquiries that a prudent Licensee would have made before entering into this agreement;
 - (f) public requirements;
 - (g) any matters which are, or (where the Licence to Occupy will not be registered) would be, unregistered interests which override first registration under Schedule 1 to the Land Registration Act 2002[. **OR** ; and]
 - (h) [any matters disclosed in the documents listed in the Schedule.]
- 14.2 The Licensee is deemed to have full knowledge of the matters referred to in clause 14.1 and shall not raise any enquiry, objection, requisition or claim in respect of any of them.
- 14.3 Conditions 4.1.1, 4.1.2, 4.1.3 and 4.2.1 do not apply to this agreement.
- 14.4 Condition 7.6.3 is amended so that reference to Condition 4.1.2 is reference to clause 14.1.
- 15. Termination on Licensee's insolvency and material non-compliance by the Licensee**
- 15.1 An Event of Default is any of the following:
- (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 Licensee;
 - (b) the making of an application for an administration order or the making of an administration order in relation to the Licensee;
 - (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 Licensee;
 - (d) the appointment of a receiver or manager or an administrative receiver in relation to any property or income of the Licensee;
 - (e) the commencement of a voluntary winding-up in respect of the Licensee, 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 Licensee;
- (g) the striking-off of the Licensee from the Register of Companies or the making of an application for the Licensee to be struck-off; [or]
- (h) the Licensee otherwise ceasing to exist; [or]
- (i) [the making of an application for a bankruptcy order, the presentation of a petition for a bankruptcy order or the making of a bankruptcy order against the Guarantor[. **OR** ; [or]]]
- (j) [the making of an application to court for, or obtaining, a moratorium under Part A1 of the Insolvency Act 1986 in relation to the Licensee [or Guarantor][. **OR** ; or]]
- (k) [the levying of any execution or other such process on or against, or taking control or possession of, the whole or any part of the Licensee's assets.]

15.2 If an Event of Default occurs, the Licenser may, at any time prior to grant of the Licence to Occupy, terminate this agreement by giving written notice to the Licensee [and Guarantor].

15.3 If at any time there is any material non-compliance by the Licensee with any of its obligations under this agreement and such default is either:

- (a) not capable of being remedied; or
- (b) is capable of remedy but the Licensee has not remedied the default within [NUMBER] working days (or such longer period as may be reasonable in the circumstances) after service on the Licensee by the Licenser of a notice specifying the default;

the Licenser may, at any time prior to grant of the Licence to Occupy, terminate this agreement by giving written notice to the Licensee.

16. Consequences of termination

16.1 If this agreement is terminated in accordance with clause 7, clause 15.2 or clause 15.3, or Condition 10.1(b), 10.5.1 or 10.6.1:

- (a) this agreement shall be terminated with immediate effect from the date of the notice to terminate and none of the parties shall have any further rights or obligations under this agreement except for:
 - (i) the rights of any party in respect of any earlier breach of this agreement; and

- (ii) the obligations in **Error! Bookmark not defined.****Error! Reference source not found.**, [**Error! Bookmark not defined.****Error! Reference source not found.**] clause 16 [, **OR** and] clause 18.3 [and **Error! Bookmark not defined.****Error! Reference source not found.**] which shall continue in force notwithstanding the termination of this agreement;
 - (b) the Licensee shall immediately return any documents it received from the Licensor; and
 - (c) the Licensee shall immediately:
 - (i) vacate the Property;
 - (ii) remove all of the Licensee's chattels from the Property; and
 - (iii) make good all damage caused by the Licensee as a result of such removal.
- 16.2 Condition 10.2 is varied to read: "if either party rescinds the contract, clause 16.1 shall apply."
- 16.3 Condition 10.5.1 is varied to read: "If the buyer fails to complete in accordance with a notice to complete, the seller may rescind the contract, and if it does so clause 16.1 shall apply."
- 16.4 Condition 10.6.1 is varied to read: "If the seller fails to complete in accordance with a notice to complete, the buyer may rescind the contract, and if it does so clause 16.1 shall apply."
- 16.5 Conditions 10.5.2, 10.5.3, 10.6.2 and 10.6.3 do not apply to this agreement.
- 17. Completion of grant of the licence to occupy**
- 17.1 Completion of the grant of the Licence to Occupy shall take place on the Licence to Occupy Completion Date.
- 17.2 [Condition 9.2.1 does not apply to this agreement.]
- 17.3 The grant of the Licence to Occupy shall be on the following terms:
- (a) the contractual term of the Licence to Occupy shall commence on [the date of completion of the Licence to Occupy **OR** the Practical Completion Date **OR** [ANY OTHER APPLICABLE DATE]] for a contractual term of [TERM DETAILS];
 - (b) the sum to be inserted as the "Licence Fee" in the Licence to Occupy shall be the Licence Fee and the Licensee's liability to pay that sum shall commence on the Licence Fee Commencement Date;

- (c) [[ANY OTHER LICENCE TO OCCUPY PROVISIONS TO BE INSERTED INTO THE LICENCE TO OCCUPY ON COMPLETION THAT NEED TO BE SET OUT IN THE AGREEMENT FOR LICENCE TO OCCUPY].]

17.4 [On completion, the Licensee shall pay to the Licensors: [SPECIFY].]

17.5 If completion is delayed due to the Licensee's default or the Licensee fails to pay any sum due under this agreement in full on completion, the Licensee shall pay interest in addition to damages for losses incurred by the Licensors as a result of the delayed completion. The interest shall be payable at the Contract Rate on any unpaid amount for the period from the Licence to Occupy Completion Date to the date of actual payment.

17.6 Condition 9.7 is amended to read: "The Licensee is to pay the money due on completion by Electronic Payment".

17.7 Condition 10.3 does not apply to this agreement.

18. [Registration]

18.1 The Licensee may [note **OR** register] this agreement by way of a [unilateral notice **OR** C(iv) Land Charge] against the [Licensor's title **OR** Licensor's name].

18.2 The Licensee is not permitted to:

- (a) note this agreement against the Licensor's title at HM Land Registry by way of an agreed notice; or
- (b) send this agreement or a copy of it to HM Land Registry.

18.3 On the earlier of the completion of the Licence to Occupy or termination of this agreement, the Licensee shall:

- (a) immediately cancel all entries relating to this agreement registered against the [Licensor's title **OR** Licensor's name]; and
- (b) promptly notify the Licensor when such application has been completed.]

18.4 [On completion, the Licensor shall hand over to the Licensee forms EX1 and EX1A together with an edited certified copy of the Licence to Occupy. The Licensee undertakes to [forward these documents **OR** procure that these documents are forwarded] to HM Land Registry simultaneously with the Licensee's own application for [registration **OR** noting] of the Licence to Occupy.]

19. VAT

- 19.1 Each amount stated to be payable under or pursuant to this agreement is exclusive of VAT (if any).
- 19.2 If any VAT is chargeable on any supply made by one party to the other party under or pursuant to this agreement, the paying party shall pay to the other party an amount equal to that VAT.
- 19.3 Condition 2 does not apply to this agreement.

20. Entire agreement

- 20.1 This agreement and the documents annexed to it constitute the entire agreement between the parties and supersede and extinguish all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to their subject matter.
- 20.2 The Licensee acknowledges that:
- (a) in entering into this agreement and any documents annexed to it the Licensee does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) other than those:
 - (i) set out in this agreement or the documents annexed to it; or
 - (ii) contained in any Written Replies; and
 - (b) no representation or warranty is given or is to be implied by:
 - (i) the Licensor entering into this agreement; or
 - (ii) any step taken by or on behalf of the Licensor in connection with this agreement
- as to the suitability of the Property [or the building of which it forms part] for the Works.
- 20.3 Condition 10.1 is varied so that the words "the negotiations leading to it" are replaced with the words "Written Replies".

21. Joint and several liability

- 21.1 Where a party to this agreement comprises more than one person, those persons shall be jointly and severally liable for the obligations and liabilities of that party arising under this agreement. The party to whom those obligations and liabilities are owed 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.

21.2 Condition 1.2 does not apply to this agreement.

22. Notices

22.1 Any notice given under this agreement must be in writing [and signed by or on behalf of the party giving it].

22.2 Any notice or document to be given or delivered under this agreement [may **OR** must] be:

- (a) delivered by hand; [or]
- (b) sent by pre-paid first class post or other next working day delivery service[; or **OR** .]
- (c) [sent through the document exchange (DX)[; or **OR** .]]
- (d) [sent by fax.]

22.3 Any notice or document to be given or delivered under this agreement must be sent to the relevant party as follows:

- (a) to the Licenser at:

[ADDRESS]

[DX: [DX NUMBER]]

[Fax: [FAX NUMBER]]

marked for the attention of: [NAME/POSITION]

or at the Licenser's Conveyancer, quoting the reference [REFERENCE];

- (b) to the Licensee at:

[ADDRESS]

[DX: [DX NUMBER]]

[Fax: [FAX NUMBER]]

marked for the attention of: [NAME/POSITION]

or at the Licensee's Conveyancer, quoting the reference [REFERENCE];

- (c) [to the Guarantor at:

[ADDRESS]

[DX: [DX NUMBER]]

[Fax: [FAX NUMBER]]

marked for the attention of: [NAME/POSITION];]

or as otherwise specified by the relevant party by notice in writing to each other party.

- 22.4 Any change of the details in clause 22.3 specified in accordance with that clause shall take effect for the party notified of the change at [9.00 am] on the later of:
- (a) the date, if any, specified in the notice as the effective date for the change; or
 - (b) the date [five] working days after deemed receipt of the notice.
- 22.5 Giving or delivering a notice or a document to a party's conveyancer has the same effect as giving or delivering it to that party.
- 22.6 Any notice or document given or delivered in accordance with clause 22.1, clause 22.2 and clause 22.3 will be deemed to have been received:
- (a) if delivered by hand, on signature of a delivery receipt [or at the time the notice or document is left at the address] provided that if delivery occurs before 9.00 am on a working day, the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a working day, or on a day which is not a working day, the notice will be deemed to have been received at 9.00 am on the next working day; [or]
 - (b) if sent by pre-paid first class post or other next working day delivery service, at [9.00 am] on the [second] working day after posting[; or **OR** .]
 - (c) [if sent through the DX, at [9.00 am] on the [second] working day after being put into the DX[; or **OR** .]]
 - (d) [if sent by fax, at the time of transmission provided that if transmission occurs before 9.00 am on a working day, the notice or document will be deemed to have been received at 9.00 am on that day, and if transmission occurs after 5.00 pm on a working day, or on a day which is not a working day, the notice will be deemed to have been received at 9.00 am on the next working day.]
- 22.7 In proving delivery of a notice or document, it will be sufficient to prove that:
- (a) a delivery receipt was signed [or that the notice or document was left at the address]; [or]
 - (b) the envelope containing the notice or document was properly addressed and posted by pre-paid first class post or other next working day delivery service[; or **OR** .]

- (c) [the envelope containing the notice or document was properly addressed and was put in the DX[; or **OR** .]]
- (d) [the fax was properly addressed and transmitted.]

22.8 A notice or document given or delivered under this agreement shall not be validly given or delivered if sent by email.

22.9 Condition 1.3 does not apply to this agreement.

22.10 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.

23. Third party rights

23.1 This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

23.2 Condition 1.5 is excluded from this agreement.

24. Governing law

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

25. Jurisdiction

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

This agreement has been entered into on the date stated at the beginning of it.

Schedule 1 Disclosed matters

[DETAILS OF MATTERS DISCLOSED UNDER clause 14.1(h).]

DRAFT

Signed by [NAME OF
DIRECTOR] for and on
behalf of [NAME OF
LICENSOR]

.....
Director

Signed by [NAME OF
DIRECTOR] for and on behalf
of [NAME OF LICENSEE]

.....
Director

[Signed by [NAME OF
GUARANTOR]

.....
[Guarantor **OR** Director]

OR

Signed by [NAME OF
DIRECTOR] for and on behalf
of [NAME OF GUARANTOR]]

ANNEX A Approved Documents in agreed form

DRAFT

ANNEX B Copy Building Contract OR Agreed form of Building Contract

DRAFT

ANNEX C [List of parties required to give Collateral Warranties]

DRAFT

ANNEX D [Agreed forms of Collateral Warranties]

DRAFT

ANNEX E Agreed form of Licence to Occupy

DRAFT

ANNEX F Agreed form of Licence for Alterations

DRAFT