LICENCE FOR WORKS AGREEMENT (TRIPARTITE)

among

[ ] **LIMITED**

[ ] **LIMITED**

and

[ ] **LIMITED**

[**with the consent of**

[ ] **LIMITED**

[**and**

[ ] **LIMITED**]]

Property:

Version 10
March 2015

LICENCE FOR WORKS AGREEMENT (TRIPARTITE)

among

[ ] **LIMITED** incorporated under the Companies Acts (Registered Number [ ]) and having their Registered Office at [ ], and includes where the context so requires their successors as landlords under the Lease ("**Landlords**")

[ ] **LIMITED** incorporated under the Companies Acts (Registered Number [ ]) and having their Registered Office at [ ], and includes where the context so requires their permitted successors as tenants under the Lease ("**Tenants**")

and

[ ] **LIMITED** incorporated under the Companies Acts (Registered Number [ ]) and having their Registered Office at [ ], and includes where the context so requires their permitted successors as tenants under the Sublease ("**Subtenants**")

[with the consent of [the Tenants' Guarantors] [and] [the Subtenants' Guarantors]]

WHEREAS:-

(A) The Landlords are the landlords under the Lease;

(B) The Tenants are the tenants under the Lease;

(C) The Subtenants are the tenants under the Sublease;

[(D) The Tenants' Guarantors are the guarantors of the tenants' obligations under the Lease;]

[(E) The Subtenants' Guarantors are the guarantors of the tenants' obligations under the Sublease;]

[(F)] The Subtenants have requested, and the Landlords and the Tenants have granted, consent to the Works on the conditions set out below.

IT IS AGREED by the Parties as follows:-

1. **Definitions and Interpretation**

1.1 **Definitions**

In this Agreement:

"**Building**" means any building of which the Property forms part;

"**CDM Regulations**" means the Construction (Design and Management) Regulations 2015;

"**EPC**" means an energy performance certificate in terms of The Energy Performance of Buildings (Scotland) Regulations 2008;

"**Lease**" means the lease between [ ] and [ ] dated [ ] and registered in the Books of Council and Session on [ ] [and also recorded in the Division of the General Register of Sasines for the County of [ ] on [ ]] [and the tenants' interest in which is registered in the Land Register of Scotland under Title Number [ ]];

"**Parties**" means the Landlords, the Tenants and the Subtenants [and] [the Tenants' Guarantors] [and] [the Subtenants' Guarantors];

"**Property**" means ALL and WHOLE [ ] being the subjects more particularly described in the Sublease;

"**Schedule**" means the schedule annexed to this Agreement;

"**Sublease**" means the sublease between [ ] and [ ] dated [ ] and registered in the Books of Council and Session on [ ] [and also recorded in the Division of the General Register of Sasines for the County of [ ] on [ ]] [and the tenants' interest in which is registered in the Land Register of Scotland under Title Number [ ]];

["**Subtenants' Guarantors**" means [ ], incorporated under the Companies Acts (Registered Number [ ]) and having their Registered Office at [ ];

["**Tenants' Guarantors**" means [ ], incorporated under the Companies Acts (Registered Number [ ]) and having their Registered Office at [ ];

"**Term**" means the term of the lease in question together with any continuation whether by Act of Parliament, tacit relocation or otherwise;

"**Verifier**" means a verifier as defined in the Building (Scotland) Act 2003;

"Working Day" means a day on which clearing banks in [Edinburgh and Glasgow] are open for normal business;

"**Works**" means the works shown on the drawings [and specification] set out in Part 2 of the Schedule.

1.2 **Interpretation**

In this Agreement, unless otherwise specified or the context otherwise requires:

1.2.1 any reference to one gender includes all other genders;

1.2.2 words in the singular only include the plural and *vice versa*;

1.2.3 any reference to the whole is to be treated as including reference to any part of the whole;

1.2.4 any reference to a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) [and that person's personal representatives, successors or permitted assignees]; words importing individuals include corporations and *vice versa*;

1.2.5 any references to this Agreement or to any other document are references to this Agreement or to that other document as varied, supplemented, assigned, novated or replaced (in each case other than in breach of the provisions of this Agreement) from time to time;

1.2.6 any reference to a Clause, Condition, Schedule or Part of the Schedule is to the relevant Clause, Condition, Schedule or Part of the Schedule of or to this Agreement;

1.2.7 any reference to a statute or statutory provision includes any subordinate legislation which is in force from time to time under that statute or statutory provision;

1.2.8 any reference to any statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time taking account of any amendment or re-enactment;

1.2.9 any phrase introduced by the words "including", "include", "in particular" or any similar expression is to be construed as illustrative only and is not to be construed as limiting the generality of any preceding words;

1.2.10 a document will be duly executed only if it is executed in such manner as meets the requirements of Section 3 of the Requirements of Writing (Scotland) Act 1995;

1.2.11 any obligation on, or right granted or reserved to, the Landlords or to the Tenants (as landlords under the Sublease) may be fulfilled or exercised by managing agents in place of or in addition to the Landlords or the Tenants (as appropriate);

1.2.12 any action to be performed on a day which is not a Working Day is to be performed on the immediately following Working Day;

1.2.13 references to writing or written do not include [faxes or] e-mail;

1.2.14 where at any one time there are two or more persons included in the expression "Tenants" or "Subtenants" [or "Tenants' Guarantors"] [or "Subtenants' Guarantors"] obligations contained in this Agreement which are expressed to be made by the party denoted by the expression in question are binding jointly and severally on them and their respective executors and representatives whomsoever without the necessity of discussing them in their order but not so as to impose any continuing liability on an assignor following a permitted assignation of the tenants' interest under the Lease or Sublease;

1.2.15 if either the Tenants or the Subtenants or both are a firm or partnership:

(a) the obligations of that party under this Agreement are binding jointly and severally on all persons who are or become partners of the firm at any time and their respective executors and representatives whomsoever as well as on the firm and its whole stock, funds, assets and estate without the necessity of discussing them in their order;

(b) except in the circumstances set out in Clause 1.2.15(c) the obligations set out in Clause 1.2.15(a) remain in full force and effect even if:

(i) the firm or partnership is dissolved;

(ii) any changes take place in the firm or partnership whether by the assumption of a new partner or partners or by the retiral, bankruptcy or death of any individual partner; or

(iii) there is a change in the firm name.

(c) if any person, who by virtue of his being a partner, is bound to implement the obligations of either the Tenants or the Subtenants, then on such person ceasing to be a partner the Landlords or the Tenants (as appropriate), on request, will release such person and his representatives from all obligations on the Tenants or the Subtenants (as appropriate) under this Agreement subsequent to the date when such person ceases to be a partner (or, if later, the date of such request) provided that it is established to the Landlords' or the Tenants' (as appropriate) reasonable satisfaction that any such release does not materially adversely affect the strength of the Tenants' or Subtenants' financial covenant (as appropriate) or their ability to implement their obligations under this Agreement;

1.2.16 any reference to "reasonable consent" means the prior written consent of the party in question, such consent not to be unreasonably withheld or delayed; and

1.2.17 references to "tenants" in Clauses 3 to 8 inclusive and in Part 1 of the Schedule are to be construed as references to the Tenants (in respect of the Lease) and the Subtenants (in respect of the Sublease), references to "landlords" are to be construed as references to the Landlords (in respect of the Lease) and the Tenants (in respect of the Sublease), and

references to "lease" are to be construed as references to the Lease or the Sublease (as appropriate).

1.3 **Headings**

The headings in this Agreement are included for convenience only and are to be ignored in construing this Agreement.

1.4 **Schedule**

The Schedule forms part of this Agreement.

2. **Grant of Consent**

Subject always to the terms and conditions specified or referred to in this Agreement, the Landlords CONSENT to the Tenants, and the Tenants CONSENT to the Subtenants, carrying out the Works.

3. **Obligations in respect of Works**

The tenants will:

3.1 comply in all respects with the conditions set out in Part 1 of the Schedule.

3.2 indemnify the landlords against any charge to tax and any interest and penalties payable in respect of or arising out of the Works.

4. **Leasehold Obligations**

On completion of the Works, all the obligations of the tenants contained in the lease [and the obligations of any guarantors] will apply *mutatis mutandis* to the Property in its then altered state.

5. **Rent Review**

Any effect on rental value attributable to the Works will be [disregarded][taken into account] for the purposes of the rent review provisions in the lease.

6. **Reinstatement at Expiry**

At the end of the Term or the earlier termination of the lease (howsoever arising), if and to the extent required by the landlords in accordance with the provisions of the lease, the tenants will at their own cost reinstate and make good the Property in compliance with:-

6.1 the provisions of the lease; and

6.2 the conditions set out in Part 1 of the Schedule as if references in that Part of the Schedule to the Works were references to the works for such reinstatement and making good.

7. **Irritancy**

The rights of irritancy contained in the lease will be exercisable not only in the event of any breach by the tenants of the obligations of the tenants contained in the lease but also in the event of any breach of any of the obligations of the tenants contained in this Agreement.

8. **Rights of Others**

This Agreement is granted subject to the rights of the owners and occupiers of all adjoining and neighbouring premises, whose rights must not be infringed by the tenants.

9. **Costs**

9.1 The Subtenants will pay within five Working Days after written demand the costs and expenses reasonably and properly incurred by the Landlords, the Tenants and their respective solicitors, [architects] and surveyors in connection with:

9.1.1 the approval of the Works;

9.1.2 the preparation, execution and completion of this Agreement; and

9.1.3 the inspection and approval of the Works during the course of the Works and after the completion of the Works.

9.2 The Subtenants will pay within five Working Days after written demand the costs of registering this Agreement in the Books of Council and Session and obtaining [four] extracts ([two] for the Landlords [one] for the Tenants and [one] for the Subtenants).

10. **[Guarantors' Consent**

The [Tenants' Guarantors] [and] [the Subtenants' Guarantors]:

10.1 consent to the terms of this Agreement; and

10.2 acknowledge that the guarantees and undertakings given by them will be enforceable not only in relation to the performance of [the Tenants' obligations under the Lease] [and] [the Subtenants' obligations under the Sublease] but also in relation to the performance of [the Tenants' obligations under this Agreement] [and] [and Subtenants' obligations under this Agreement].

11. [**Landlords' entitlement to enforce Sublease**

Insofar as the Lease or the Sublease entitles the Landlords to enforce directly the obligations of the Subtenants under the Sublease, the Landlords may enforce directly the obligations of the Subtenants under this Agreement, but without prejudice to the Landlords' rights against the Tenants.]

12. [**Obligations of Tenants and Subtenants**

The Subtenants acknowledge that the intention of this Agreement is to impose on the Subtenants obligations to the Tenants which mirror exactly those imposed on the Tenants to the Landlords, and to that end the Subtenants undertake to the Tenants to comply with all obligations under this Agreement so that the Tenants are fully and effectively indemnified by the Subtenants in respect of the performance of all obligations imposed on the Tenants (as tenants under the Lease) under this Agreement.]

13. [**No Warranty**

No representation or warranty is given or implied on the part of the Landlords or the Tenants (as landlords under the Sublease) as to either the suitability of the Property (or the Building) for the Works, or as to whether the Works or any removal or reinstatement of them may be lawfully carried out.]

14. [**Ratification of Lease and Sublease**

Except in so far as amended by this Agreement, the Parties for their respective interests (if any) confirm that the whole provisions of the Lease and the Sublease remain in full force and effect.]

15. [**Consent to Registration**

The Parties consent to the registration of this Agreement for preservation and execution]: IN WITNESS WHEREOF

This is the Schedule referred to in the foregoing Licence for Works Agreement among [ ], [ ] and [ ] [with consent of [ ] [and [ ]]]

Part 1

Conditions

1. **Insurance**

1.1 In carrying out the Works to take such action as the landlords or their insurers may require to ensure that the landlords' insurances are not rendered void or voidable or the policy monies under them withheld in whole or in part.

1.2 To produce, if requested by the landlords or their insurers, a written certificate of value of the Works for insurance purposes.

1.3 To pay to the landlords any increased or extra premium payable for insurance of the Property and any other adjoining or neighbouring premises owned or occupied by the landlords as a result of the carrying out of the Works.

1.4 At the commencement, and throughout the carrying out, of the Works, to procure that the tenants' contractors have in force the normal contractual insurances (including suitable public liability cover), and, in so far as any risks which are likely to arise from the carrying out of the Works are not already covered by the insurances effected in terms of the lease or this Agreement, to insure or cause to be insured such risks (in so far as they can reasonably be insured) to the reasonable satisfaction of the landlords and on request to produce to the landlords the policy or policies of such insurance together with receipts for the current premiums.

2. **Consents**

At the tenants' own expense:

2.1 prior to the commencement of the Works to obtain all necessary statutory and other third party consents (including, if required, planning permission and building warrant) in relation to the carrying out of the Works and to produce copies of them (together with all docquetted drawings) to the landlords;

2.2 to comply with all conditions attaching to such consents; and

2.3 within one month after completion of the Works to submit a completion certificate to the Verifier and as soon as received from the Verifier to produce of copy of the notice of acceptance of a completion certificate and a copy of the original completion certificate to the landlords.

3. **Statutory Requirements**

To comply with all applicable general or local Acts of Parliament, bye-laws, orders, instruments and regulations made under them and the regulations made by and the requirements of the local and any other requisite authority, including, in so far as they apply to the Works, the Control of Asbestos Regulations 2012 (in pursuance of which the tenants will deliver to the landlords on request all requisite asbestos records and treatment plans) and the CDM Regulations and:

3.1 where the CDM Regulations apply:

3.1.1 the Subtenants will be the sole client in respect of the Works for the purposes of the CDM Regulations;

3.1.2 where the Works are notifiable in terms of the CDM Regulations the Subtenants will notify the Works to the Health & Safety Executive and forward a copy of the notification

to the landlords within three Working Days of it being sent to the Health and Safety Executive;

3.1.3 [the Subtenants will ensure that the Health & Safety file (as defined in the CDM Regulations) is properly prepared, reviewed and updated in accordance with the CDM Regulations and will supply to the landlords a copy of the Health & Safety file (duly completed in accordance with the CDM Regulations) as soon as practicable after completion of the Works;] *[Note: Use this wording where the Subtenants are responsible for maintaining the health and safety file – this will probably be the case where the property has a single tenant.]*]

[3.1.3 the Subtenants will supply all information necessary to enable the landlords to keep the Health & Safety file up to date; *[Note: Use this wording where the Landlords or the Tenants are responsible for maintaining the health and safety file – this will probably be the case for a multi-let property.]*

3.2 where the CDM Regulations do not apply, the Subtenants will supply to the landlords such drawings and other information as the landlords may reasonably require in relation to the Works in order to allow the landlords to update the Health & Safety file for the Property (or the Building);

3.3 the Subtenants will procure that copyright licences are obtained so that all the material in the Health & Safety file may be copied and used by the landlords or any other party to enable them to comply with their duties under the CDM Regulations and for other related purposes.

4. **EPCs**

4.1 In the case of Works which may adversely affect either an existing EPC rating or the efficiency of the use of energy or water within the Property (or the Building), to provide sufficient information to the landlords to enable the landlords to ascertain the effect of the Works, and to implement any suggestions that the landlords make to avoid or minimise any such adverse effect.

4.2 In the case of Works which necessitate the provision of a new EPC, to obtain a new EPC at the tenants' cost and to provide a copy of such EPC to the landlords.

4.3 In the case of Works to any plant, equipment or services in the Property (or the Building) which affect the energy efficiency of such plant, equipment or services, to provide such information about the energy efficiency of the altered plant or equipment as the landlords reasonably require.

5. **Notification**

To notify the landlords or their surveyors in writing not less than five Working Days prior to the date of commencement of the Works and immediately after the Works have been completed.

6. **Timescale**

To commence the Works (if not already commenced) within [three] months from the last date of execution of this Agreement and to complete the Works within [six] months from the last date of execution of this Agreement.

7. **Conduct of Works**

7.1 At the tenants' own expense to carry out the Works in a proper and workmanlike manner with good quality materials all to the reasonable satisfaction of the landlords or their surveyors [and/or architects][and/or engineers] and to the satisfaction of the local and any other requisite authority, and, where an appropriate British Standard Specification or British Standard Code of Practice issued by the British Standards Institution is current at the last date of execution of this Agreement, to procure that all goods and materials used or supplied are, and all workmanship is, in accordance with that standard.

7.2 To carry out the Works with the least inconvenience, disturbance or disruption reasonably practicable to the landlords and to the owners and occupiers of adjoining or neighbouring premises and to make good to the reasonable satisfaction of the landlords all damage arising out of or incidental to the Works including any damage to such adjoining or neighbouring premises.

7.3 To take all proper precautions during the progress of the Works to ensure that the safety of the structure of the Property (or the Building) is not endangered in any way.

8. **Inspection**

To permit the landlords and their surveyors [and/or architects][and/or engineers] at all reasonable times to inspect the progress of the Works and the quality of the materials and workmanship used.

9. **Landlords' Notices**

9.1 To carry out and complete such works and to do such things as the landlords acting reasonably may specify in a notice in writing to the tenants as being necessary to comply with the obligations on the part of the tenants contained in this Agreement.

9.2 Failing the carrying out and completion of such works and the doing of such things within two months after such notice (or within such other reasonable period as may be specified in such notice having regard to the nature and extent of the outstanding works or things) to:

9.2.1 permit the landlords to carry out all or any of such works and do all or any of the things specified in such notice; and

9.2.2 pay to the landlords on demand the properly incurred cost of carrying out and completing such works or doing such things with interest thereon at the rate specified in the lease as applicable to unpaid rent from the date or dates of disbursement by the landlords until payment.

10. **Indemnity**

To indemnify the landlords (except in so far as covered by the insurances referred to in the lease and in Condition 1 of this Part of the Schedule) effectually against:

10.1 all actions or other proceedings, costs, claims, losses and demands howsoever arising in relation to the carrying out and completion of the Works; and

10.2 any liability due to any requirements of the Health and Safety at Work Etc Act, 1974 by reason of or arising out of the Works other than any criminal sanctions imposed by the court under this legislation.

Part 2

Drawings [and specification] showing the Works