LICENCE FOR WORKS AGREEMENT (TRIPARTITE)

among

[ ] LIMITED

[ ] LIMITED

and

[ ] LIMITED

[with the consent of

[ ] LIMITED

[and

[ ] LIMITED]]

Property: [ ]

Version 15
March 2018

LICENCE FOR WORKS AGREEMENT (TRIPARTITE)

among

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

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

and

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

[with the consent of [the Tenant's Guarantor] [and] [the Subtenant's Guarantor]]

WHEREAS:-

(A) The Landlord is the landlord under the Lease;

(B) The Tenant is the tenant under the Lease;

(C) The Subtenant is the tenant under the Sublease;

[(D) The Tenant's Guarantor is the guarantor of the tenant's obligations under the Lease;]

[(E) The Subtenant's Guarantor is the guarantor of the tenant's obligations under the Sublease;]

[(F)] The Subtenant has requested, and the Landlord and the Tenant 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:

"**Action Plan**" means an action plan in terms of the Assessment of Energy Performance of Non-domestic Buildings (Scotland) Regulations 2016;

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

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

"**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 tenant's interest in which is registered in the Land Register of Scotland under Title Number [ ]];

"**Parties**" means the Landlord, the Tenant and the Subtenant [and] [the Tenant's Guarantor] [and] [the Subtenant's Guarantor];

"**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 tenant's interest in which is registered in the Land Register of Scotland under Title Number [ ]];

["**Subtenant's Guarantor**" means [ ], incorporated under the Companies Acts (Registered Number [ ]) and having its Registered Office at [ ];

["**Tenant's Guarantor**" means [ ], incorporated under the Companies Acts (Registered Number [ ]) and having its 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; and

"**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 or Sections 9B and 9C of the Requirements of Writing (Scotland) Act 1995;

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

1.2.12 any action to be performed on a day which is not a Business Day is to be performed on the immediately following Business 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 "Tenant" or "Subtenant" [or "Tenant's Guarantor"] [or "Subtenant's Guarantor"] 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 Tenant's right to the Lease or Sublease;

1.2.15 if either the Tenant or the Subtenant 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 Tenant or the Subtenant, then on such person ceasing to be a partner the Landlord or the Tenant (as appropriate), on request, will release such person and his representatives from all obligations on the Tenant or the Subtenant (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 Landlord's or the Tenant's (as appropriate) reasonable satisfaction that any such release does not materially adversely affect the strength of the Tenant's or Subtenant's financial covenant (as appropriate) or its ability to implement its 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 "tenant" in Clauses 3 to 8 inclusive and in Part 1 of the Schedule are to be construed as references to the Tenant (in respect of the Lease) and the Subtenant (in respect of the Sublease), references to "landlord" are to be construed as references to the Landlord (in respect of the Lease) and the Tenant (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 Landlord CONSENTS to the Tenant, and the Tenant CONSENTS to the Subtenant, carrying out the Works.

3. **Obligations in respect of Works**

The tenant will:

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

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

4. **Lease Obligations**

On completion of the Works, all the obligations of the tenant contained in the lease [and the obligations of any guarantor] 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 landlord in accordance with the provisions of the lease, the tenant will at its 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 tenant of the obligations of the tenant contained in the lease but also in the event of any breach of any of the obligations of the tenant 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 tenant.

9. **Costs**

9.1 The Subtenant will pay within five Business Days after written demand the costs and expenses reasonably and properly incurred by the Landlord, the Tenant 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 Subtenant will pay within five Business Days after written demand the costs of registering this Agreement in the Books of Council and Session and obtaining [three] extracts ([one] for the Landlord [one] for the Tenant and [one] for the Subtenant).

10. [**Guarantor's Consent**

The [Tenant's Guarantor] [and] [the Subtenant's Guarantor]:

10.1 consent[s] to the terms of this Agreement; and

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

11. [**Landlord's entitlement to enforce Sublease**

Insofar as the Lease or the Sublease entitles the Landlord to enforce directly the obligations of the Subtenant under the Sublease, the Landlord may enforce directly the obligations of the Subtenant under this Agreement, but without prejudice to the Landlord's rights against the Tenant.]

12. [**Obligations of Tenant and Subtenant**

The Subtenant acknowledges that the intention of this Agreement is to impose on the Subtenant obligations to the Tenant which mirror exactly those imposed on the Tenant to the Landlord, and to that end the Subtenant undertakes to the Tenant to comply with all obligations under this Agreement so that the Tenant is fully and effectively indemnified by the Subtenant in respect of the performance of all obligations imposed on the Tenant (as tenant under the Lease) under this Agreement.]

13. [**No Warranty**

No representation or warranty is given or implied on the part of the Landlord or the Tenant (as landlord 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. **Contract (Third Party Rights) (Scotland) Act 2017**

This Agreement does not create any rights in favour of third parties under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce or otherwise invoke any provision of this Agreement.

15. [**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 will remain in full force and effect.]

16. [**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 the tenant will take such action as the landlord or its insurers may require to ensure that the landlord's insurances are not rendered void or voidable or the policy monies under them withheld in whole or in part.

1.2 The tenant will produce, if requested by the landlord or its insurers, a written certificate of value of the Works for insurance purposes.

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

1.4 At the commencement, and throughout the carrying out, of the Works:

1.4.1 the tenant will procure that the tenant's contractors have in force the normal contractual insurances (including suitable public liability cover); and

1.4.2 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, the tenant will insure or cause to be insured such risks (in so far as they can reasonably be insured) to the reasonable satisfaction of the landlord; and

1.4.3 on request the tenant will produce to the landlord the policy or policies of such insurance together with receipts for the current premiums.

2. **Consents**

At the tenant's own expense, the tenant will:

2.1 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 will produce copies of them (together with all docquetted drawings) to the landlord prior to the commencement of the Works;

2.2 comply with all conditions attaching to such consents; and

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

3. **Statutory Requirements**

The tenant will 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 tenant will deliver to the landlord 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 Subtenant 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 Subtenant will notify the Health & Safety Executive and forward a copy of the notification to the Landlord within three Business Days of it being sent to the Health and Safety Executive;

3.1.3 [the Subtenant 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 Landlord 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 SubTenant is 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 Subtenant will supply all information necessary to enable the Landlord to keep the Health & Safety file (as defined in the CDM Regulations) up to date; *[Note: Use this wording where the Landlord is 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 Subtenant will supply to the Landlord such drawings and other information as the Landlord may reasonably require in relation to the Works in order to allow the Landlord to update the Health & Safety file for the Property (or the Building);

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

4. **Energy Performance**

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

4.2 In the case of Works which necessitate the provision of a new EPC, the tenant will obtain a new EPC at the tenant's cost and provide a copy of the EPC to the landlord.

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, the tenant will provide such information about the energy efficiency of the altered plant or equipment as the landlord reasonably requires.

5. **Notification**

The tenant will notify the landlord or its surveyors in writing not less than five Business Days prior to the date of commencement of the Works and immediately after the Works have been completed.

6. **Timescale**

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

[If it starts the Works the tenant will carry out and complete them diligently and without interruption and in any event within [six] months of the date of this Agreement.]

7. **Conduct of Works**

7.1 At the tenant's own expense the tenant will carry out the Works in a proper and workmanlike manner with good quality materials:

7.1.1 to the reasonable satisfaction of the landlord or its surveyors [and/or architects] [and/or engineers]; and

7.1.2 to the satisfaction of the local and any other requisite authority.

7.2 If 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, the tenant will procure that all goods and materials used or supplied are, and all workmanship is, in accordance with that standard.

7.3 The tenant will carry out the Works with the least inconvenience, disturbance or disruption reasonably practicable to the landlord and to the owners and occupiers of adjoining or neighbouring premises.

7.4 The tenant will make good to the reasonable satisfaction of the landlord all damage arising out of or incidental to the Works including any damage to adjoining or neighbouring premises.

7.5 The tenant will 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**

The tenant will permit the landlord and its 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. **Landlord's Notices**

9.1 The tenant will carry out and complete such works and do such things as the landlord acting reasonably may specify in a notice in writing to the tenant as being necessary to comply with the obligations on the part of the tenant contained in this Agreement ("**Remedial Works**").

9.2 Failing the carrying out and completion of the Remedial Works within two months after such notice (or within such other reasonable period as may be specified in the notice having regard to the nature and extent of the Remedial Works) the tenant will:

9.2.1 permit the landlord to carry out all or any of the Remedial Works; and

9.2.2 pay to the landlord on demand the properly incurred costs of carrying out and completing the Remedial Works with interest at the rate specified in the Lease as applicable to unpaid rent from the date or dates of disbursement by the landlord until payment.

10. **Indemnity**

The tenant will indemnify the landlord (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