LEASE

(based on the Model Commercial Lease of Whole Building (Retail) (MCL-RETAIL-01) Version 1.8a)

between

[ ]

and

[ ]

Property: [ ]

[DRAFTING NOTE: THIS LEASE IS INTENDED TO BE USED AS A TEMPLATE. IT SHOULD BE ALTERED TO REFLECT ANY REQUIREMENTS THAT ARE SPECIFIC TO THE PROPERTY, PARTIES AND TERMS OF THE TRANSACTION. A COMPARISON AGAINST THIS TEMPLATE SHOULD BE SUPPLIED WHEN THE DRAFT LEASE IS FIRST SUBMITTED TO THE TENANT'S SOLICITORS.]

Version 8
August 2025

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LEASE

between

[ ] LIMITED, incorporated under the Companies Acts (Registered Number [ ]) and having its Registered Office at [ ] and its successors and assignees (the "**Landlord**"); and

[ ] LIMITED, incorporated under the Companies Acts (Registered Number [ ]) and having its Registered Office at [ ] and (in substitution) its successors and permitted assignees (the "**Tenant**")

The Landlord and the Tenant agree as follows:

1. **Definitions**

In this Lease:

"**Act**" means any act of the UK or Scottish Parliament and any delegated law made under it;

["**Action Plan**" means an action plan as defined in the AEP Regulations in relation to the Premises;]

["**AEP Regulations**" means the Assessment of Energy Performance of Non-domestic Buildings (Scotland) Regulations 2016;]

["**Break Date**" means [*Insert date or dates*][1] [or any date falling after that date] [or the day before any Rent Day after that date] [or any [fifth] anniversary of that date] [as specified in the Tenant's formal notice given under Clause 7.1];][2]

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

"**Common Facilities**" means all Conducting Media, structures, walls, fences, roads, paths, works, services or facilities used in common by the Premises and any adjoining premises or by the owners and occupiers of them;

"**company**" includes:

(a) any UK registered company (as defined in Section 1158 of the Companies Act 2006);

(b) any UK limited liability partnership (as defined in Section 1(2) of the Limited Liability Partnerships Act 2000);

(c) to the extent applicable, any overseas company (as defined in Section 1044 of the Companies Act 2006);

(d) to the extent applicable, any oversea limited liability partnership (as defined in Section 14(3) of the Limited Liability Partnerships Act 2000); and

(e) any unregistered company (to include any association);

"**Conducting Media**" means any media for the transmission of Supplies;

"**Creditor**" means any creditor in any permitted standard security over the Tenant's right to this Lease which has been notified to the Landlord;

["**Display Energy Certificate**" means as defined in the AEP Regulations;]

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1 When deciding on the relevant Break Date, best practice is to make it the day before a rent payment date. This ensures that the Tenant is not legally obliged to pay a full month's or quarter's rent on the day on which this Lease ends under the break clause.

2 Delete if this Lease will not include break rights.

"**Electronic Communications Apparatus**" means "electronic communications apparatus" as defined in paragraph 5 of Schedule 3A to the Communications Act 2003;

"**End Date**" means the last day of the Term (however it arises);

"**Environmental Performance**" means all or any of the following:

(a) energy consumption;

(b) water consumption;

(c) Waste generation and management;

(d) Greenhouse Gas Emissions; and

(e) other adverse environmental impacts,

including arising from works carried out to or materials used in the Premises;

"**EPC**" means an Energy Performance Certificate and Recommendation Report (as defined in the Energy Performance of Buildings (Scotland) Regulations 2008);

"EPC Rating" means the energy performance indicator (as defined in the Energy Performance of Buildings (Scotland) Regulations 2008) shown on an EPC (or any equivalent rating which is substituted for it from time to time);

"Excluded Tenant's Works" means, except to the extent that the Landlord stipulates otherwise, any Permitted Works;[3]

"Greenhouse Gas Emissions" means emissions of the greenhouse gases listed at Annex A of the 1998 Kyoto Protocol to the United Nations Framework Convention on Climate Change as amended from time to time;

"**Group Company**" means any company which is a subsidiary or holding company of the Tenant or the Landlord (as the case may be) or a subsidiary of such holding company (as the terms "subsidiary" and "holding company" are defined in Section 1159 of the Companies Act 2006);

"Improving the Environmental Performance" includes all or any of the following:

(a) a reduction in or improved efficiency of energy consumption, including the use of alternative sources of energy with a lower environmental impact;

(b) a reduction in or improved efficiency of water consumption;

(c) a reduction in Waste generation;

(d) improved rates or efficiency of Waste recycling or reuse of resources;

(e) a reduction in Greenhouse Gas Emissions; and

(f) a reduction in other adverse environmental impacts,

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[3] Up to version 1.7 of the Model Commercial Lease as adapted by the PSG, any alterations or additions to the Premises were included in the Landlord's insurance obligation unless they were tenant's fixtures. This definition and the corresponding provisions in the Lease change the position so that the Landlord is not required to insure any alterations or additions to the Premises unless it stipulates that it will insure them. If you want to follow the provisions in version 1.7 of the PSG version of the Model Commercial Lease in this Lease:

- delete this definition, the reference to it in clause 4.8.8 and delete the whole of paragraph 1 of Part 4 of the Schedule; and
- add an exclusion of the Landlord's obligation to insure tenant's fixtures in Part 5 of the Schedule (refer to paragraph 2.5 of Part 4 of the Schedule in version 1.7 of the PSG version of the Model Commercial Lease).

in each case, taking into account any changes in the use or intensity of use of the Premises (and "**Improve the Environmental Performance**" is construed in the same way);

"**Insolvency Date**" means either the date of appointment of the Insolvency Practitioner or the date of calling up by a Creditor;

"**Insolvency Practitioner**" means any receiver, administrator or liquidator appointed in respect of the Tenant;

"**Insurance Costs**" means the sums described in paragraph 2.1 of Part 4 of the Schedule;

"**Insured Risks**" means the risks of fire (including subterranean fire), lightning, explosion, storm, flood, subsidence, landslip, heave, earthquake, burst or overflowing water pipes, tanks or apparatus, impact by aircraft or other aerial devices and any articles dropped from them, impact by vehicles, terrorism, riot, civil commotion and malicious damage to the extent, in each case, that cover is generally available on normal commercial terms in the UK insurance market at the time the insurance is taken out, and any other risks against which the Landlord reasonably insures from time to time, subject in all cases to any excesses, limitations and exclusions imposed by the insurers;[4]

"**Interest Rate**" means [three] per cent above the base rate for the time being in force of [*Insert name of bank*] (or any other UK clearing bank specified by the Landlord);

"**Lease**" means this lease, and any document supplemental to it;

"**Legal Requirement**" means:

(a) any Act; and

(b) any requirement of any proper authority, including any local authority or fire authority;

"**Monetary Breach**" means any failure by the Tenant to pay all or any part of the sums payable by the Tenant under this Lease when due;

"**Non-Monetary Breach**" means any failure by the Tenant to perform any of its obligations under this Lease other than a Monetary Breach;

["**Operational Rating Measures**" means as defined in the AEP Regulations;]

"**Outgoings**" means all or any of:

(a) all existing and future rates, taxes, duties, charges, and financial impositions charged on the Premises or any owner or occupier of them except for:

(i) tax (other than VAT) on the Rent payable; and

(ii) any tax arising from the Landlord's dealing with its own interests;

(b) Supply Costs for the Premises;

(c) all costs and expenses for which the Landlord, any other owner or the occupier of the Premises is responsible in respect of the Common Facilities; and

(d) a fair and reasonable proportion of the Outgoings referred to in paragraphs (a) and (b) of this definition charged in respect of the Premises and any adjoining premises;

"**Permitted Use**" means:

(a) the [non-food] [retail sale] of [*Insert description*]; or

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[4] Note that "terrorism" is mentioned expressly as insurers now treat "terrorism" as a risk, even if it is a risk that may be covered by an exclusion in the insurance policy.

(b) any other [non-food] [retail] use [complying with the Landlord's retail and tenant mix policy and][5] within paragraph (1) of Class 1A (*Shops and financial, professional and other services*) of the Schedule to the Town and Country Planning (Use Classes) (Scotland) Order 1997 [other than paragraphs [ ] of that Class][6] as the Landlord may approve;

"**Permitted Works**" means any works or installations to which the Landlord has consented or for which, under Clause 4.10, the Landlord's consent is not required[together with any Prior Lease Alterations][7];

"**Planning Acts**" means every Act for the time being in force relating to the use, development, design, control and occupation of land and buildings;

"**Planning Permission**" means any permission, consent or approval given under the Planning Acts;

"**Plans**" means any of the plans[8] forming Part 8 of the Schedule;

"**Premises**" means ALL and WHOLE the premises known as [*Insert address of Premises*] [and shown [edged] [coloured] [*Insert colour*] on [the Plans] [Plan [*Insert number*]] [, being the premises registered in the Land Register of Scotland under Title Number [ ]], including:

(a) all buildings from time to time on the Premises and the load-bearing walls, structure, foundations and roofs of those buildings;

(b) one half severed vertically of any walls separating the Premises from any adjoining premises;

(c) all Conducting Media and landlord's plant, equipment and fixtures exclusively serving the Premises; and

(d) any other parts of the Premises installed by or on behalf of the Tenant or any other occupier;

["**Prior Lease**" means a lease of the [Premises][9] entered into between [*Insert name of parties*] dated [ ] [and registered in the Books of Council and Session on [ ]] and all documents supplemental or ancillary to it;][10]

["**Prior Lease Alterations**" means all works carried out to or for the benefit of the [Premises][11] during the term of the Prior Lease or under any contract for the grant of the Prior Lease [described in the schedule of works annexed and executed as relative to this Lease];][12]

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5 Reference to a retail mix policy will be appropriate only where the Landlord owns a number of shops in the locality and wants to ensure a good mix of retail occupiers.

6 Consider whether there are any of the specified uses in that class that your client would wish to exclude.

7 Include the words in square brackets where this Lease follows on from a pre-existing lease with the Tenant (the Prior Lease) and the Landlord wants the Tenant to be under an obligation to reinstate works carried out under the Prior Lease when this Lease comes to an end.

8 If this Lease is to be registered in the Land Register then the plan(s) must satisfy the Cadastral Mapping Deed Plan Requirements of the Land Register of Scotland.

9 If the extent of the Premises has changed since the date of the Prior Lease, amend this definition to refer to the extent of the premises originally let by the Prior Lease.

10 Include this definition where this Lease follows on from a pre-existing lease with the Tenant and the Landlord wants the Tenant to be under an obligation to reinstate works carried out under the Prior Lease when this Lease comes to an end or those works are to be disregarded on any rent review under this Lease,

11 If the extent of the Premises has changed since the date of the Prior Lease, amend this definition to refer to the extent of the premises originally let by the Prior Lease.

12 Include this definition where this Lease follows on from a pre-existing Lease with the Tenant and the Landlord wants the Tenant to be under an obligation to reinstate works carried out under the Prior Lease when this Lease comes to an end or those works are to be disregarded on any rent review under this Lease.

Because it can be difficult to establish which works have to be taken into account or disregarded on rent review or reinstated at the end of the term, consider agreeing and annexing a Schedule to this Lease setting out the works carried out under the Prior Lease, whether they will have to be reinstated and their status on a rent review under this Lease.

["**Recommended Improvement Measures**" means identified improvement measures or alternative improvement measures or any combination of the two both as defined in the AEP Regulations;]

"**Rent**" means the yearly rent of [*Insert amount in words*] POUNDS (£[*Insert amount in figures*]) Sterling (exclusive of any VAT)[, subject to review on each Rent Review Date in accordance with Part 3 of the Schedule];

"**Rent Commencement Date**" means [*Insert date or description*] or any later date calculated in accordance with paragraph 4.3 of Part 4 of the Schedule;

"**Rent Days**" means [28 February, 28 May, 28 August and 28 November] [25 March, 24 June, 29 September and 25 December] [the first day of every month][13];

["**Rent Review Date**" means [*Insert date*] [in each of the years [*Insert years*] and references to "the Rent Review Date" mean the relevant Rent Review Date];] [14]

"**Risk Period**" means the period for which the Landlord decides to insure against loss of Rent, being a minimum of three years and a maximum of [five][15] years, starting on the date of the relevant damage or destruction;

"**Schedule**" means the schedule of [eight] Parts annexed and executed as relative to this Lease;

["**Schedule of Condition**" means [the schedule annexed and executed as relative to this Lease and marked "Schedule of Condition"] [the schedule of condition prepared by [ ] dated [ ] a copy of which has been retained by each of the Landlord and the Tenant][16];][17]

["**Service Provider**" means any person providing services to the Tenant at the Premises for the purposes of the Tenant's business;]

"**Supplies**" means water, [steam,] gas, air, foul and surface water drainage, electricity, oil, telephone, heating, cooling, telecommunications, internet, data communications and similar supplies or utilities;

"**Supply Costs**" means the costs of Supplies including procurement costs, meter rents and standing charges and any taxes or levies payable on them;

"**Term**" means the period of this Lease (including any continuation of this Lease whether by Act, tacit relocation or otherwise);

"**Term End Date**" means [*Insert date*];

"**Term Start Date**" means [*Insert date*];

"**Uninsured Risk**"[18] means any risk expressly specified in the Insured Risks definition that:

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13 If rent is payable monthly, refer to the relevant payment date; for example, the first day of each month.

14 The Rent Review Date(s) should ideally correspond to one of the Rent Days.

15 Consider increasing this period if you think that it may take longer than five years to obtain any necessary consents and to rebuild following damage by an insured risk.

16 Consider the alternative drafting if it is likely to prove administratively cumbersome for the Schedule of Condition to be annexed potentially requiring signature on most pages; alternative possibility is to identify the Schedule of Condition and declare that a print is retained by each party or to have the Schedule of Condition signed by the respective parties' solicitors.

17 Include only where the Tenant's repairing obligation will be limited to keeping the Premises in the state of repair current at the date this Lease is granted.

18 In relation to Uninsured Risks, this Lease gives the Tenant all the benefits it would have if damage were caused by an Insured Risk except that the Landlord has a choice as to whether or not to reinstate. It must make this choice by telling the Tenant within 12 months of the damage whether or not it wishes it reinstate. If it does not, this Lease will end after that 12 month period. These provisions are only a starting point, as standard practice continues to evolve on the detail, including exactly how you define Uninsured Risks and what happens to any residual risks/parts of risks, not in this or the Insured Risks definition. You will need to consider how best to address this and, if necessary, take specific instructions as different landlords will have different approaches.

(a) is not insured against because, at the time the insurance is taken out or renewed, insurance is not generally available in the UK market on normal commercial terms; or

(b) is not, at the date of the damage or destruction, insured against by reason of a limitation or exclusion imposed by the insurers

but will not include loss or damage (or the risk of it) caused by reason of the Tenant's wilful act or failure to act;

"**VAT**" means value added tax or any similar tax from time to time replacing it or performing a similar function;

"**VAT Supply**" means a "supply" for the purpose of the Value Added Tax Act 1994;

"**Waste**" means any spoil, waste, rubbish, debris, materials or goods which are created by or result from any activity undertaken by any person in the Premises; and

"**Wireless Data Services"** means the provision of wireless data, voice or video connectivity or wireless services permitting or offering access to the internet or any wireless network, mobile network or telecommunications system that involves a wireless or mobile device.

2. **Interpretation**

2.1 All headings in this Lease are for ease of reference only and will not affect its construction or interpretation.

2.2 In this Lease, "includes", "including" and similar words are used without limitation or qualification to the subject matter of the relevant provision.

2.3 In this Lease:

2.3.1 "notice" means any notice, notification or request given or made under it;

2.3.2 a notice must be given or made in writing;

2.3.3 where service of a formal notice is required, that notice must comply with and be served in accordance with Clause 6.5; and

2.3.4 an application for Landlord's consent must be made by formal notice.

2.4 References in this Lease to:

2.4.1 "the Premises" mean the whole or an individual part or parts unless inappropriate in the context used;

2.4.2 "adjoining premises" mean any land or buildings adjoining or nearby the Premises, whether or not owned by the Landlord (unless express reference is made to the Landlord's ownership of those premises);

2.4.3 an Act are to that Act as amended from time to time and to any Act that replaces it but references to the Town and Country Planning (Use Classes)

(Scotland) Order 1997 are to that Order as in force at the Term Start Date;[19]

2.4.4 the singular include the plural and vice versa, and one gender include any other;

2.4.5 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

2.4.6 a Clause, Schedule or Part of the Schedule are to the relevant Clause, Schedule or Part of the Schedule of or to this Lease and references, in any Part of the Schedule, to a numbered paragraph is a reference to the relevant numbered paragraph in that Part of the Schedule, in each case unless otherwise specified or the context otherwise requires;

2.4.7 approval or consent mean a prior written approval or consent, such approval or consent not to be unreasonably withheld or delayed:

(a) except where this Lease states that the party whose approval or consent is required has absolute discretion;

(b) and, in Clause 4.14.3, which will be subject to the additional provisions set out in it;

2.4.8 any sums being payable on demand or when demanded mean being payable when demanded in writing;[20] and

2.4.9 the provision of plans, drawings, specifications or other documents mean their provision in hard copy or electronically in PDF format or in any other easily readable format as may be appropriate in the context of the purpose for which they are provided and the nature of the information that they contain, but not in a format that is proprietary to a particular computer system or program that cannot be imported into or easily read by another computer system or program.[21]

2.5 Obligations in this Lease:

2.5.1 owed by or to more than one person are owed by or to them jointly and severally, along with their respective executors and representatives whomsoever without the necessity of discussing

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19 Where this Lease follows on from a pre-existing Lease with the Tenant, consider whether references to the Town and Country Planning (Use Classes) (Scotland) Order 1997 should be to that Order as in force at the date of the pre-existing lease.

20 Any sums payable on demand only begin to bear interest for late payment if not paid within 10 Business Days of the date of demand – see Clause 4.4.

21 Where plans and specifications are provided to the Landlord, you should ensure that the Landlord has the right to use those plans and specifications – see paragraph 2.6.7 of Part 5 of the Schedule.

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 this Lease;

2.5.2 to do something include an obligation not to waive any obligation of another person to do it; and

2.5.3 not to do something include an obligation not to permit or allow another person to do it.

2.6 The Tenant will be liable for any breaches of its obligations in this Lease committed by:

2.6.1 any authorised occupier of the Premises or its or their respective employees, licensees or contractors; and

2.6.2 any person under the control of the Tenant or acting under the express or implied authority of the Tenant.

2.7 If the Tenant is a firm or partnership (other than a limited liability partnership under the Limited Liability Partnerships Act 2000):

2.7.1 the obligations of the Tenant under this Lease 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;

2.7.2 except in the circumstances set out in Clause 2.7.3, the obligations set out in Clause 2.7.1 remain in full force and effect even if:

(a) the firm or partnership is dissolved;

(b) any change or 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

(c) there is a change in the firm name; and

2.7.3 if any person, who by virtue of being a partner, is bound to implement the Tenant's obligations, then on such person ceasing to be a partner the Landlord on request, will release such person and their representatives from all obligations on the Tenant under this Lease 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 reasonable satisfaction that any such release does not materially adversely affect the strength of the

Tenant's financial covenant or its ability to implement its obligations under this Lease.

2.8 The Landlord will be liable for any breaches of its obligations in this Lease committed by any person under the control of the Landlord or acting under the express or implied authority of the Landlord.

2.9 If a person is under an obligation under this Lease to take a matter into consideration, that person will have reasonable regard to it but the final decision remains at that person's absolute discretion.

2.10 Where the consent of the Landlord is required for any assignation[,] [or] [subletting] [or charge] of this Lease, that consent may only be given in writing.

2.11 Where either the Landlord or the Tenant has the right to impose regulations or to decide, designate, nominate, request, require, specify, allocate, stipulate or vary any matter or thing under this Lease, that right will be subject to a condition that it will be exercised reasonably and properly except where this Lease states that the party exercising the right has absolute discretion. This clause does not apply to any provisions in this Lease that refer to the parties agreeing something.[22]

2.12 Apart from in Clause 4.9.3, where either the Tenant or the Landlord is obliged to pay any costs that the other incurs (or any proportion of them) under this Lease, those costs must be reasonable and proper and reasonably and properly incurred.

2.13 The Landlord's reserved rights under Clause 4.9 and Part 2 of the Schedule may also be exercised by those authorised by the Landlord.[23]

2.14 If any provision or part of any provision of this Lease is held to be illegal, invalid or unenforceable, that provision or part will apply with such modification as may be necessary to make it legal, valid and enforceable. If modification is not possible, that provision or part will be deemed to be deleted. The legality, validity or enforceability of the remainder of this Lease will not be affected.

2.15 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.

2.16 The Schedule forms part of this Lease.

3. **Demise, Term and Rent**

3.1 In consideration of the Rent and other provisions of this Lease the Landlord lets the Premises to the Tenant:

3.1.1 for a term starting on the Term Start Date and ending on the Term End Date[subject to the right to terminate in Clause 7];

3.1.2 together with the rights listed in Part 1 of the Schedule;[24]

3.1.3 excepting and reserving to the Landlord the reserved rights listed in Part 2 of the Schedule;

3.1.4 subject to the provisions of any documents or matters specified or referred to in the title deeds; and

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22 In practice, the only provisions in this Lease that allow the Tenant to impose requirements are in Clause 5.4.

23 Safeguards relating to the exercise of rights are contained in Clause 5.4 and, in relation to scaffolding, in Clause 5.5.

24 On a letting of whole it may not be necessary to grant the Tenant specific rights for the benefit of the Premises.

3.1.5 subject to any servitudes, rights and privileges currently existing and affecting the Premises.

3.2 Starting on the Term Start Date and ending on the day immediately preceding the Rent Commencement Date, no Rent other than £1 (if asked only) is payable.

3.3 Starting on the Rent Commencement Date, the Tenant must pay the Rent.

3.4 Starting on the Term Start Date, the Tenant must pay the Insurance Costs.

3.5 The Rent is not payable for any period before the Rent Commencement Date and the Insurance Costs are not payable for any period before the Term Start Date.

3.6 The Tenant must pay VAT under Clause 4.3.

3.7 The Rent is payable by equal [monthly] [quarterly] payments in advance on the Rent Days in every year. The first payment will be a proportionate payment for the period starting on (and to be paid on) the Rent Commencement Date and ending on the last day of that [month] [quarter].

3.8 The Rent and all other sums payable under this Lease must be paid by the Tenant by electronic transfer from a United Kingdom bank account to the United Kingdom bank account notified by the Landlord to the Tenant from time to time.

3.9 The Tenant must not make any retention, deduction, set-off or counterclaim from any payment due under this Lease unless required to do so by law.[25]

4. **Tenant's Obligations**

4.1 **Rent**

The Tenant must pay the Rent when due.

4.2 **Outgoings**

4.2.1 The Tenant must pay all Outgoings when demanded.

4.2.2 [If the Landlord loses the benefit of any rates relief or exemption after the End Date because the Tenant has received that benefit before the End Date, the Tenant must pay the Landlord on demand an amount equal to the relief or exemption that the Landlord has lost.][26]

4.3 **VAT**

4.3.1 The Tenant must pay:

(a) VAT on any consideration in respect of a VAT Supply to the Tenant by the Landlord at the same time as the consideration is paid; and

(b) on demand VAT (and interest, penalties and costs where these are

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[25] The Landlord may wish to reflect on the efficacy of this drafting in the light of the Trustees of the Buchanan House Unit Trust v Scott Wilson Railways Limited [2020] GLA 45, and the application of the common law right of abatement.

[26] Consider whether this is appropriate in the context of the length of this Lease.

incurred because of anything the Tenant does or fails to do) charged in respect of any VAT Supply to the Landlord in respect of this Lease where that VAT is not recoverable by the Landlord from HM Revenue & Customs.

4.3.2 The Tenant must not do anything that would result in the disapplication of the option to tax in respect of the Landlord's interest in the Premises.

4.4 **Interest on overdue payments**

The Tenant must pay interest on the Rent and on all other sums not paid on or by the due date (or, if no date is specified, not paid within 10 Business Days after the date of demand). Interest will be payable at the Interest Rate for the period starting on the due date (or date of demand) and ending on the date of payment.

4.5 **Reimburse costs incurred by the Landlord**

The Tenant must pay on demand the Landlord's costs (including legal and surveyor's charges and sheriff officer's fees) and disbursements in connection with:

4.5.1 any breach of the Tenant's obligations in this Lease, including the preparation and service of a formal notice under Clause 6.1;

4.5.2 any application by the Tenant for consent under this Lease, whether that application is withdrawn or consent is granted or lawfully refused, except in cases where the Landlord is required to act reasonably and the Landlord unreasonably refuses to give consent; and

4.5.3 the preparation and service of a schedule of dilapidations served no later than six months after the End Date.

4.6 **Third party indemnity**[27]

4.6.1 The Tenant must indemnify the Landlord against all actions, claims, demands made by a third party, all costs, damages, expenses, charges and taxes payable to a third party and the Landlord's own liabilities, costs and expenses incurred in defending or settling any action, claim or demand made by a third party, in each case arising from:

(a) the state and condition of the Premises or the Tenant's use of them;

(b) the exercise of the Tenant's rights; or

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[27] The indemnity relates only to third party claims against the Landlord. For losses directly incurred by the Landlord, the Landlord needs to rely on the normal rules for an award of damages for a breach of the Tenant's contractual obligations under this Lease.

(c) the carrying out of any Permitted Works.

4.6.2 In respect of any claim covered by the indemnity in Clause 4.6.1, the Landlord must:

(a) give formal notice to the Tenant of the claim as soon as reasonably practicable after receiving notice of it;

(b) provide the Tenant with any information and assistance in relation to the claim that the Tenant may reasonably require and the Landlord is lawfully able to provide, subject to the Tenant paying to the Landlord all costs incurred by the Landlord in providing that information and assistance; and

(c) mitigate its loss (at the Tenant's cost) where it is reasonable for the Landlord to do so.

4.7 **Insurance**

The Tenant must comply with its obligations in Part 4 of the Schedule.

4.8 **Repair and decoration**

4.8.1 The Tenant accepts the Premises in their condition at the Term Start Date as being in good and substantial repair and condition and fit for the purpose let. All implied warranties as to fitness for purpose and all common law obligations of the Landlord for ordinary and/or extraordinary repair, replacement, renewal or reinstatement of the Premises are excluded.

4.8.2 The Tenant must:

(a) keep the Premises in good and substantial repair and condition and clean and tidy and as necessary renew, replace and rebuild the Premises; [28]

(b) keep all Conducting Media, plant, equipment or fixtures forming part of the Premises [(or that

[28] This is the standard form of repairing obligation to be used unless otherwise agreed by the parties. Where there will be a schedule of condition, you should retain this wording and include clause 4.8.6.

exclusively serve them)][29] properly maintained and in good working order in accordance with good industry practice; and

(c) replace (where beyond economic repair) any Conducting Media and plant, equipment or fixtures forming part of the Premises [(or that exclusively serve them)] [30] with items of equivalent or better quality.

4.8.3 The Tenant must promptly replace any damaged glass forming part of the Premises with glass of equivalent appearance and of the same or better quality.

4.8.4 [The Tenant must keep all car parking areas within the Premises suitably marked out and all parts of the Premises that are not built on clear of rubbish and waste materials and, where appropriate, properly landscaped.]

4.8.5 As and when necessary and in the final six months of the Term the Tenant must decorate the interior [and exterior] of the Premises. [The Tenant must redecorate the exterior of the Premises in every third year of the Term and in the final six months of the Term.] Any changes in the external colour scheme must first be approved by the Landlord.

4.8.6 [Notwithstanding any other provision in this Clause 4.8, the Tenant's obligations under this Clause 4.8 will be restricted to keeping any part of the Premises shown or described in the Schedule of Condition clean and tidy and in no worse state of repair and condition than the state of repair and condition of those parts as evidenced by the Schedule of Condition.[31]]

4.8.7 The obligations under this Clause 4.8 apply:

(a) to both ordinary and extraordinary repairs;

(b) regardless of the age or state of dilapidation of the Premises; and

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29 The words in square brackets are required only where Conducting Media or plant, equipment or fixtures that exclusively serve the Premises are not included in the grant of lease to the Tenant.

30 The words in square brackets are required only where Conducting Media or plant, equipment or fixtures that exclusively serve the Premises are not included in the grant of lease to the Tenant.

31 Include this clause where the Landlord and Tenant have agreed to limit the repairing obligations by reference to a schedule of condition. As the schedule of condition may not show the state of repair of all parts of the Premises, Clause 4.8.2 will apply where the schedule of condition does not show the state of repair. This is preferable to the repairing obligation being limited solely to the schedule of condition as this leaves uncertainty about the extent of the repairing obligation in respect of those parts of the Premises not shown in the schedule of condition.

(c) regardless of the cause of damage, deterioration or destruction even if the cause is a latent or inherent defect.[32]

4.8.8 The obligations under this Clause 4.8 (apart from Clause 4.8.3) exclude:

(a) damage by any Insured Risk, except to the extent that:

(i) payment of any insurance money is refused because of anything the Tenant does or fails to do and the Tenant has not complied with paragraph 2.1.2 of Part 4 of the Schedule; or

(ii) it is to the Excluded Tenant's Works; and

(b) damage by any Uninsured Risk.

4.9 **Allow entry**

4.9.1 The Tenant must allow the Landlord to enter and inspect the Premises.

4.9.2 If the Landlord requires the Tenant to remedy any breach of the Tenant's obligations regarding the state and condition of the Premises or to remove any unauthorised alterations then the Tenant must comply with those requirements immediately in the case of an emergency or, in all other cases, begin to comply with those requirements within one month after being notified of them and diligently complete any works required.

4.9.3 If the Tenant does not comply with Clause 4.9.2, the Landlord may enter the Premises and carry out any works required itself. The Tenant must repay, as a debt on demand, all the costs the Landlord incurs in so doing. The Landlord's rights under Clause 6.1 will be unaffected.

4.10 **Alterations**

4.10.1 The Tenant has no rights to carry out any alterations, works or installations to the Premises unless it is expressly permitted to do so under this Clause 4.10.

4.10.2 The Tenant must not carry out any alterations or additions to the Premises that will have a material adverse impact on the Environmental Performance of the Premises.

4.10.3 The Tenant may, with the Landlord's consent, carry out works to the Premises to install, alter or remove the shop front.

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[32] The drafting here departs from the MCL template in recognition of the usual expectation in the Scottish marketplace that in order to make a lease institutionally acceptable, the Tenant may have to assume contingent responsibility for extraordinary repairs.

4.10.4 The Tenant may install, alter and remove tenant's fixtures[33] and carry out internal non-structural works to the Premises without the Landlord's consent, but the Tenant must notify the Landlord promptly after completing those works. To enable those works to be carried out, the Tenant may drill fixing holes into the floors, ceilings, columns or walls of the Premises.

4.10.5 The Tenant must comply with its obligations in Part 5 of the Schedule when carrying out or installing any Permitted Works, whether or not the Landlord's consent is required for them.[34]

4.10.6 Where the Landlord's consent is expressly required under this Clause 4.10, the Landlord may impose requirements on the Tenant in addition to those contained in Part 5 of the Schedule when giving its consent.

4.11 **Signs and advertisements**

4.11.1 The Tenant must not display any signs or advertisements on the Premises other than:

(a) signs approved by the Landlord;

(b) normal trade signs displayed from within the Premises; or

(c) signage on the fascia of the Premises that indicates the Tenant's trading name in the style of and consistent with the Tenant's standard fascia signage.

4.11.2 The Tenant must maintain either the visibility of the shop interior from the shop front or a window display in keeping with good retailing practice.

4.11.3 The Tenant must keep the Premises adequately lit during [the usual trading hours for retail premises in the vicinity of the Premises] [such hours as the Landlord may stipulate].

4.12 **Obligations at the End Date**

4.12.1 By the End Date the Tenant must have removed:

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[33] As tenant's fixtures form part of the Premises, their removal would be an alteration that would otherwise require consent. Consider whether there are any tenant's fixtures that should not be removed or be removed only with consent – for example industrial equipment.

[34] Part 5 of the Schedule is included in an attempt to speed up and reduce the cost of obtaining Landlord's consent. In most cases landlords will be able to consent by simple letter. Where Part 5 of the Schedule does not contain all the obligations the Landlord requires because of the specific nature of the intended works, Clause 4.10.6 allows the Landlord to impose additional obligations. That may still be done by simple letter – see paragraph 2.5 of Part 5 of the Schedule. Where works are to be taken into account on rent review or must definitely be removed at the end of this Lease, that should be documented separately at the time the Landlord gives consent.

(a) all tenant's and trade fixtures and loose contents from the Premises ([excluding][including] floor coverings and [including][excluding] window blinds); [35]

(b) all Electronic Communications Apparatus and apparatus relating to Wireless Data Services installed by the Tenant or any subtenant at the Premises;

(c) all signage installed by the Tenant or any subtenant at the Premises;

(d) unless and to the extent that the Landlord and the Tenant otherwise agree, all Permitted Works; and

(e) without affecting any other Landlord's rights, any works that have been carried out in breach of any obligation in this Lease.

4.12.2 The Tenant must make good all damage to the Premises caused when complying with Clause 4.12.1 and restore them to the same configuration, state and condition as they were in before the items removed were originally installed.

4.12.3 At the End Date the Tenant must:

(a) give back the Premises (and the fixtures, plant and equipment in them) in good decorative order and in a state, condition and working order consistent with the Tenant's obligations in this Lease;[36]

(b) give back the Premises with vacant possession; and

(c) hand to the Landlord any registers or records

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[35] Consider whether floor coverings and window blinds should be reinstated or left in place, as the parties may not necessarily want them removed or replaced.

[36] If the Landlord will want the Tenant to hand back the Premises in a condition that is different to how the Tenant received them, you will need to attach a "reinstatement schedule" setting out the state of repair and condition in which the Premises should be returned at the end of the Term. This may be required, for example, where the Tenant received the Premises in a shell and core condition, but the Landlord will not want the Premises stripped out back to shell and core at the end of the Term.

maintained by the Tenant pursuant to any statutory duty that relate to the Premises in compliance with Clause 4.18 including any health and safety file, EPC and asbestos risk assessment and management plan.

4.12.4 If the Tenant has not removed all of its property from the Premises by the End Date:

(a) the Landlord may dispose of that property as the agent of the Tenant after giving the Tenant not less than five Business Days' notice of its intention to do so;

(b) the Tenant must indemnify the Landlord against any liability of the Landlord to any third party whose property has been disposed of in the genuine but mistaken belief that it belonged to the Tenant; and

(c) the Landlord must pay to the Tenant the proceeds of the disposal after deducting the costs of transportation, storage and disposal incurred by the Landlord.

4.13 **User**[37]

4.13.1 The Tenant must not use the Premises other than for the Permitted Use.[38]

4.13.2 The Tenant must not use the Premises:

(a) for any illegal activity;

(b) as a betting office, an amusement arcade or in connection with gaming;

(c) for any political or campaigning purposes or for any sale by auction;[39] or

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37 There is no obligation on the Landlord to grant the Tenant exclusive use rights.

38 Note there is no keep open clause.

39 Consider whether any additional restrictions on use should be included in this Lease.

(d) for the sale of alcohol for consumption [on or off] the Premises or for the preparation or cooking of food other than, in either case, in connection with staff[and customer] catering facilities ancillary to the Permitted Use.

4.13.3 The Tenant must not:[40]

(a) keep in the Premises any plant, machinery or equipment (except that properly required for the Permitted Use) or any petrol or other explosive or specially flammable substance[(other than petrol in the tanks of vehicles parked in any parking spaces within the Premises)];

(b) load or unload any vehicle unless it is in a loading area provided for that purpose;

(c) cause any nuisance or damage to the Landlord or to the owners, tenants or occupiers of any adjoining premises;

(d) overload any part of the Premises or any plant, machinery, equipment or Conducting Media;

(e) compromise the fire safety measures within the Premises;[41]

(f) do anything that blocks the Conducting Media or makes them function less efficiently including any blockage to or corrosion of any drains, pipes or sewers by virtue of any waste, grease or refuse deposited by the Tenant or any cleaning of them carried out by the Tenant; or

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[40] There is no clause that specifically deals with contamination though aspects are covered in the statutory compliance clause. Where the property or proposed use may give rise to this issue, you may want to consider adding an appropriate clause. See the environmental part of the schedule in the leases of logistics premises for sample wording.

[41] This would include for example not cutting holes in fire separating walls, fire stopping cavity barriers etc.

(g) operate any apparatus so as to interfere with the lawful use of Electronic Communications Apparatus or the provision of Wireless Data Services on any adjoining premises.

4.13.4 The Landlord does not warrant that the Permitted Use is, will be, or will remain lawfully permitted under the Planning Acts or the title deeds. The Tenant remains bound by the Tenant's obligations under this Lease even if the use is not lawfully permitted under the Planning Acts.

4.13.5 The Tenant must not install or use Electronic Communications Apparatus or apparatus relating to Wireless Data Services within the Premises unless solely for use in connection with the lawful occupier's business at the Premises[. Landlord's consent must be obtained prior to installation].

4.13.6 [On each day that the Premises are open for trade, the Tenant must arrange the regular collection of any of the Tenant's customer trolleys that have been left outside the Premises.][42]

4.13.7 The Tenant must provide the Landlord with the names, addresses and telephone numbers of not fewer than two people who from time to time hold keys and any security access codes to the Premises and who may be contacted in an emergency if the Landlord needs access to the Premises outside the Tenant's normal business hours.

4.13.8 [The Tenant must not use any parking spaces forming part of the Premises:

(a) except for the parking of vehicles belonging to persons working at the Premises or any authorised visitors to the Premises; or

(b) for the repair, refuelling or maintenance of any vehicles.]

4.14 **Dealings with the Premises**[43]

4.14.1 The Tenant must not assign, sublet, charge, hold on trust or part with or share possession or occupation of the Premises in whole or in part, except as authorised under this Clause 4.14[or Part 7 of the Schedule].

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42 Landlord's requirements in relation to trolley collection will vary.

43 There is no offer back provision in this Lease.

4.14.2 [The Tenant must not assign the Tenant's right to the whole of the Premises[or sublet the Tenant's right to the Premises in whole or in part] during the first three years of the Term.]

4.14.3 The Tenant may assign the Tenant's right to the whole of the Premises with the Landlord's consent (such consent not to be unreasonably withheld or delayed if the prospective tenant is of sound financial standing and demonstrably capable of fulfilling the Tenant's obligations under this Lease),[44] except that:

(a) the Landlord may refuse consent to assign if the Tenant has not paid in full the Rent and all other sums due to the Landlord under this Lease that are not the subject of a legitimate dispute about their payment;

(b) the Landlord may refuse consent to assign in any other circumstances where it is reasonable to do so; and

(c) the Landlord may require any other condition to the Landlord's consent if it is reasonable to do so.

4.14.4 [The provisions of Part 7 of the Schedule apply to sublettings of the Premises and the Tenant must comply with its obligations in that Part of the Schedule.]

4.14.5 The Tenant may charge the Tenant's right to the whole of the Premises to a genuine lending institution without the Landlord's consent but the Tenant must notify the Landlord under Clause 4.15 of any charge created.

4.14.6 In addition to the provisions of this Clause 4.14, the Tenant may share occupation of the Premises with a Group Company of the Tenant[, a Service Provider] or concessionaire on condition that:

(a) the Tenant notifies the Landlord of the identity of the occupier and the part of the Premises to be occupied;

(b) no relationship of landlord and tenant is created or is allowed to arise[and the Premises retain the

[44] If such criteria are not satisfied the Landlord may seek a suitable guarantee of the Tenant's lease obligations and/or a rent deposit – in which context please refer to the latest applicable form published by the PSG.

appearance of a retail unit in single occupation];

(c) the sharing of occupation ends if the occupier is no longer a Group Company of the Tenant[, a Service Provider] or a concessionaire; [and]

(d) the Tenant notifies the Landlord promptly when the occupation ends[; and

(e) at any time concessionaires occupy no more than [*Insert percentage*]% of the sales area of the Premises in aggregate][45].

4.15 **Registration of dealings**

The Tenant must provide the Landlord with an extract or certified copy (as appropriate) of every document transferring or granting any right to the Premises within two weeks after the transfer or grant of that right.[46]

4.16 **Marketing**

4.16.1 The Tenant must, during the six months before the End Date, allow the Landlord to:

(a) place on the Premises (but not obstructing the Tenant's shop window display) a notice for their disposal; and

(b) show the Premises at reasonable times in the day to potential tenants (who must be accompanied by the Landlord or its agents).

4.16.2 The Tenant must allow the Landlord at reasonable times in the day to show the Premises to potential purchasers of the Premises (who must be accompanied by the Landlord or its agents).

4.17 **Notifying the Landlord of notices or claims**

The Tenant must notify the Landlord as soon as reasonably practicable after the Tenant receives or becomes aware of any notice or claim affecting the Premises.[47]

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45 Consider whether any other restrictions on the number of concessionaries or the areas that they can occupy are required.

46 The lack of a registration fee is deliberate.

47 The lack of an obligation on the Tenant to act on the Landlord's requirements following the service of a formal notice is deliberate.

4.18 **Comply with Acts**

4.18.1 The Tenant must do everything required under and must not breach any Act in respect of the Premises and their use and occupation and the exercise of the rights granted to the Tenant under this Lease.

4.18.2 [Without prejudice to the generality of the provisions of this Clause 4.18, the Tenant must implement any Recommended Improvement Measures identified within any Action Plan in so far as they relate to the Premises [within the timescale laid down in the AEP Regulations][48][by the earlier of (i) the date by which completion of the Recommended Improvement Measures is required in terms of the AEP Regulations (ii) the End Date][49].][50]

4.18.3 The Tenant must promptly notify the Landlord of any defect or disrepair in the Premises that may make the Landlord liable under any Act or under this Lease.

4.19 **Planning Acts**

4.19.1 The Tenant must comply with the requirements of the Planning Acts and with all Planning Permissions relating to or affecting the Premises or anything done or to be done on them.

4.19.2 The Tenant must not apply for any Planning Permission except where any approval or consent required under any other provisions in this Lease for development or change of use has already been given and the Landlord has approved the terms of the application for Planning Permission.

4.19.3 The Tenant may only implement a Planning Permission that the Landlord has approved.

4.20 **Encroachments and Servitudes**

The Tenant must not allow any rights or servitudes to be acquired over the Premises. If an encroachment may result in the acquisition of a right or servitude:

4.20.1 the Tenant must notify the Landlord; and

4.20.2 the Tenant must help the Landlord in any way that the Landlord requests to prevent that acquisition so long as the Landlord meets the Tenant's costs and it is not adverse to the Tenant's business interests to do so.

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[48] Use where it has been agreed that works will only be done by the Tenant if they require by law to be completed prior to the End Date.

[49] Use where it has been agreed that works will be done by the Tenant irrespective of whether this Lease terminates before or after the date on which the works require to be completed under the AEP Regulations.

[50] Insert where it has been agreed the Tenant will carry out any works required to the Premises under the AEP Regulations.

4.21 **Title Conditions**

The Tenant must:

4.21.1 comply with any title conditions (which includes servitudes) relating to the Premises;

4.21.2 do nothing which would cause the Landlord to be in breach of such title conditions; and

4.21.3 not exercise any right which the Tenant may have to enforce any title condition relating to the Premises against a third party without the Landlord's consent.

4.22 **[Turnover information]**

The Tenant must supply to the Landlord on a monthly basis (to enable the Landlord to monitor sales at and the performance of the Premises) details of daily gross turnover by means of the link provided by the Landlord (whether email, computer, telephone or any other method required by the Landlord).][51]

4.23 **Applications for consent or approval**

Where the Tenant makes any application to the Landlord for consent or approval under this Lease, the Tenant must provide to the Landlord all the information the Landlord requires to enable the Landlord to consider the application.

5. **Landlord's Obligations**

5.1 **Warrandice**

Subject to the other provisions in this Lease, the Landlord grants warrandice.

5.2 **Insurance**

The Landlord must comply with the Landlord's obligations in Part 4 of the Schedule.

5.3 **Repayment of rent**

5.3.1 The Landlord must refund any Rent and Insurance Costs paid in advance by the Tenant in relation to the period falling after the End Date within [10] Business Days after the End Date.

5.3.2 Clause 5.3.1 will not apply if the Landlord ends this Lease under Clause 6.1 or if this Lease is disclaimed by the Crown or by a liquidator or trustee in bankruptcy of the Tenant.[52]

5.4 **Entry Safeguards**

The Landlord must, when entering the Premises to exercise any Landlord's rights:

5.4.1 give the Tenant at least [three] Business Days' prior notice (except in the case of emergency,

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[51] This clause should be included only if it is a specific requirement of the Landlord to monitor turnover in respect of the Premises. Clause 5.6 of the Landlord's obligations includes an obligation on the Landlord to keep the figures provided confidential and to stress the confidential nature of the information when providing it to permitted third parties.

[52] If this Lease comes to an end due to the Tenant's default, the Landlord will be able to retain any rents paid in advance to meet any outstanding liabilities of the Tenant at the End Date.

when the Landlord must give as much notice as may be reasonably practicable);

5.4.2 observe the Tenant's requirements (but where that includes being accompanied by the Tenant's representative the Tenant must make that representative available);

5.4.3 observe any specific conditions to the Landlord's entry set out in this Lease;

5.4.4 cause as little interference to the Tenant's business as reasonably practicable;

5.4.5 cause as little physical damage as reasonably practicable;

5.4.6 repair any physical damage that the Landlord causes as soon as reasonably practicable;

5.4.7 where entering to carry out works, obtain the Tenant's approval to the location, method of working and any other material matters relating to the preparation for, and execution of, the works;

5.4.8 remain on the Premises for no longer than is reasonably necessary; and

5.4.9 where reasonably practicable, exercise any rights outside the normal business hours of the Premises.

5.5 **Scaffolding**[53]

5.5.1 The Landlord must ensure that any scaffolding erected outside the Premises in exercise of the Landlord's rights under this Lease:

(a) is not erected or retained (unless in an emergency) during the months of January, November and December or during the one week period either side of Easter Sunday, in each year;

(b) is removed as soon as reasonably practicable, with any damage caused to the exterior of the Premises made good;

(c) causes as little obstruction as is reasonably practicable to the entrance to the Premises; and

[53] If the Premises are free-standing or the Landlord does not own adjoining premises, the right to erect scaffolding may not be required.

(d) does not have advertising displayed on it (except for any health and safety notices and signs relating to any other tenant whose premises are obstructed or interfered with by the scaffolding) unless the Tenant has consented to its display.

5.5.2 If the Tenant's sign and fascia or display window is obstructed or interfered with by the scaffolding, the Landlord will permit the Tenant to display a sign (approved by the Landlord) on the exterior of the scaffolding in front of the Premises so that it is visible to the public.

5.6 **[Turnover Information**

5.6.1 The Landlord will only use any information provided to the Landlord under Clause 4.22 for management purposes in connection with the monitoring and assessment of sales at and the performance of the Premises. The Landlord may disclose it to the following people on the terms of Clause 5.6.2:

(a) the Landlord's advisors and funders;

(b) any party (and their advisors and funders) interested in acquiring the Landlord's interest in the Premises ;

(c) where required by law; and

(d) where required by the rules of any listing authority.

5.6.2 Where the Landlord is allowed to disclose the information to someone else under this Clause 5.6, the Landlord will stress its confidential nature.]

6. **Provisos**

6.1 **Landlord's right to end this Lease (irritancy)**

6.1.1 **Monetary Breach**

(a) If a Monetary Breach occurs the Landlord must not terminate this Lease without first giving formal notice to the Tenant and to each Creditor:

(i) requiring payment of the outstanding sum within the period of 14 days immediately following the date of service of the formal notice;[54] and

(ii) stating that failure to pay within that period may result in this Lease being terminated.

(b) If neither the Tenant nor any Creditor complies with a formal notice given under Clause 6.1.1(a) the Landlord may, at any time afterwards:

(i) terminate this Lease with immediate effect by formal notice to the Tenant; and

(ii) enter, repossess and enjoy the Premises as if this Lease had not been granted.

6.1.2 **Non-Monetary Breach**

(a) If there is a Non-Monetary Breach which is capable of being remedied the Landlord must not terminate this Lease without first giving formal notice to the Tenant and to each Creditor specifying the Non-Monetary Breach on which the Landlord is seeking to rely and specifying a date by which that Non-Monetary Breach must be remedied stating that failure to remedy the breach by that date may result in this Lease being terminated.

(b) For the purposes of Clause 6.1.2(a):

(i) the date specified in any formal notice for remedy of a Non-Monetary Breach; and

(ii) any measure to be taken by the Tenant specified in any formal notice,

will be reasonable having regard to the nature and circumstances giving rise to the Non-Monetary Breach, the practicability of remedying it and the respective interests at that time of the Landlord, the Tenant and any Creditor under this Lease.

(c) If neither the Tenant nor any Creditor complies with a formal notice given under Clause 6.1.2(a) or if there is a Non-Monetary

[54] This is the period specified in the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985.

Breach which is not capable of being remedied the Landlord may:

(i) terminate this Lease with immediate effect by formal notice to the Tenant; and

(ii) enter, repossess and enjoy the Premises as if this Lease had not been granted.

6.1.3 **Insolvency**

If any event listed in Clause 6.1.4 occurs, the Landlord may (subject to the terms of the Insolvency Act 1986) terminate this Lease with immediate effect by formal notice to the Tenant and enter, repossess and enjoy the Premises as if this Lease had not been granted.

6.1.4 The events referred to in Clause 6.1.3, are as follows[55]:

(a) if the Tenant is a company:

(i) it enters into liquidation (either voluntary or compulsory other than a voluntary liquidation of a solvent company for the purpose of amalgamation or reconstruction) or if a receiver or an administrator is appointed;

(ii) it is wound up or a petition for winding up or application for the appointment of administrators to the Tenant[56] is presented against the Tenant that is not dismissed or withdrawn within ten Business Days of being presented;[57]

(iii) a proposal for a voluntary arrangement in relation to it is made or a meeting of the Tenant's creditors or any of them is summoned under Part I of the Insolvency Act 1986;

(iv) it becomes unable to pay its debts as referred to and/or defined in Section 123 of the Insolvency Act 1986;

(v) it enters into a compromise or arrangement under Part 26 or Part 26A of the Companies Act 2006 or Part I of the Insolvency Act 1986; or

(vi) it is struck off the register of companies or is dissolved; or

(b) if the Tenant is an individual they:

(i) make an application to be declared insolvent, or becomes apparently insolvent;

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55 We have not provided as a ground for irritancy that the tenant has taken any steps to obtain a moratorium or a moratorium comes into force under Part A1 to the Insolvency Act 1986 (introduced by the Corporate Insolvency and Governance Act 2020 because (a) any steps that might be taken by a company in advance of obtaining a moratorium are not a matter of public record so it is difficult to envisage any circumstances in which the landlord could become aware that the tenant is planning to enter into a moratorium and (b) once the moratorium is in force irritancy is prohibited. We considered that the circumstances in which such a ground for irritancy could be relied on are very remote. As the PSG lease is intended to strike a reasonable balance between the requirements of the landlord and the tenant we considered that treating a moratorium (which is intended to give the tenant some breathing space in which to improve its prospects) as a ground for irritancy goes against the intention of the moratorium concept.

56 Interim administration begins upon administration application being made to court.

57 The period of time requires to be fairly short as any payment of rent after presentation could, potentially, fall foul of S.127 IA 1986.

(ii) make any arrangement or compromise with its creditors;

(iii) are sequestrated or a petition for sequestration of the Tenant is presented against the Tenant that is not dismissed or withdrawn within ten Business Days of being presented; or

(iv) sign a trust deed for creditors; or

(c) any event similar to any listed in Clauses 6.1.4(a) or 6.1.4(b) occurs in relation to the Tenant in any jurisdiction other than Scotland.

6.1.5 If, prior to this Lease being terminated in accordance with Clause 6.1.3, the Insolvency Practitioner or Creditor delivers a validly executed personal undertaking (in a form acceptable to the Landlord) to accept personal liability for the payment of the Rent (whether due for the period before or after the Insolvency Date) and for the performance of all of the other obligations of the Tenant under this Lease from the Insolvency Date until the earlier of:

(a) the date of the permitted disposal of the Tenant's right to this Lease;

(b) the expiry of a [six] month period from the Insolvency Date; and

(c) the End Date;

then the Landlord will not exercise its right in Clause 6.1.3 until the expiry of the period of [six] months from the Insolvency Date.

6.1.6 If the Insolvency Practitioner or Creditor delivers to the Landlord a validly executed personal undertaking as specified in Clause 6.1.5, the Landlord will deal with any request for consent to assign this Lease made by the Insolvency Practitioner or Creditor in the same manner mutatis mutandis as if the request had been made by the Tenant.

6.1.7 **Preservation of Other Claims and Remedies**

(a) The Landlord's rights under this Clause 6.1 are in addition, and without prejudice, to any other claims and remedies available to the Landlord.

(b) The termination of this Lease under the terms of Clauses 6.1.1, 6.1.2 or 6.1.3 will not prejudice any claim or remedy of the

Landlord in respect of any previous breach of the Tenant's obligations under this Lease.

6.2 **Rei Interitus**

Except to the extent expressly provided in this Lease, and notwithstanding any rule of law to the contrary, this Lease will not end by reason of any damage to or destruction of the Premises but will remain in full force and effect.[58]

6.3 **No acquisition of servitudes or rights**

6.3.1 Unless they are expressly included in Part 1 of the Schedule, the grant of this Lease does not include any liberties, privileges, servitudes, rights or advantages over any adjoining premises.

6.3.2 The Tenant has no rights that would restrict building or carrying out of works to any adjoining premises, other than any that the Landlord specifically grants the Tenant in this Lease.

6.3.3 The Tenant must not do or omit to do anything that would or might result in the loss of any right enjoyed by the Premises.

6.3.4 The Tenant has no rights to enforce, release or modify or to prevent the enforcement, release or modification of the benefit of any obligations, rights or conditions to which any other property within any adjoining premises are subject.

6.4 **Works to adjoining premises**

If the Landlord carries out [(a)] works of construction, demolition, alteration or redevelopment [or (b) any Recommended Improvement Measures] on any adjoining premises that might affect the use and enjoyment of the Premises, it must:

6.4.1 give the Tenant details of the works to be carried out;

6.4.2 consult with the Tenant as to the management of potential interference;

6.4.3 take reasonable steps to ensure that the works do not materially adversely affect the Tenant's ability to trade from the Premises;

6.4.4 take into consideration modern standards of construction and workmanship;

6.4.5 take reasonable steps to reduce any interference to the Premises by noise, dust and vibration (having taken into consideration the Tenant's suggestions for limiting any interference); and

6.4.6 make good any physical damage to the Premises or its contents.

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[58] The Landlord may wish to reflect on the efficacy of this drafting in the light of the Trustees of the Buchanan House Unit Trust -v- Scott Wilson Railways Limited [2020] GLA 45, and the application of the common law right of abatement.

6.5 **Service of formal notices**

6.5.1 Any formal notice (including a notice to quit) must be in writing and sent by pre-paid first class post or special delivery to or otherwise delivered to or left at the address of the recipient under Clause 6.5.2 or to any other address in the United Kingdom that the recipient has specified as its address for service by giving not less than 10 Business Days' formal notice under this Clause 6.5.[59]

6.5.2 A formal notice served on:

(a) a company registered in the United Kingdom must be served at its registered office;

(b) a person incorporated or resident in a country outside the United Kingdom must be served at the address for service in the United Kingdom of that party set out in the document to which they are a party or if no such address has been given at their last known address in the United Kingdom or, if there is no last known address in the United Kingdom, the address of their registered office or last known address in their country of incorporation or residence. [The following [are the addresses] [is the address] for service in the United Kingdom[60] for:

(i) [Insert name of Landlord] – [Insert address]; and

(ii) [Insert name of Tenant] – [Insert address]]; and

(c) anyone else must be served:

(i) in the case of the Landlord, at any postal address in the United Kingdom shown from time to time for the registered proprietor or if no such address is given, at its last known address in the United Kingdom;

(ii) in the case of the Tenant, at the Premises; and

(iii) in respect of any other party, at their last known address in the United Kingdom.

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[59] Use this wording where service by e-mail is not a permitted form of service for formal notices. If service by e-mail is permitted, see the Guidance Notes for Leases for example wording.

[60] If any of the original parties to this Lease are non-UK parties, include an address for service in the United Kingdom for that party here.

6.5.3 A formal notice given will be treated as served on the second Business Day after the date of posting if sent by pre-paid first class post or special delivery or at the time the formal notice is delivered to or left at the recipient's address if delivered to or left at that address.

6.5.4 If a formal notice is treated as served on a day that is not a Business Day or after 5.00pm on a Business Day it will be treated as served at 9.00am on the next Business Day.

6.5.5 Service of a formal notice by fax or e-mail is not a valid form of service under this Lease.

6.6 **Contract (Third Party Rights) (Scotland) Act 2017**

This Lease 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 Lease.

6.7 **Energy Performance**[61]

6.7.1 The Tenant must not commission an EPC in respect of the Premises unless required to do so by the Energy Performance of Buildings (Scotland) Regulations 2008. If the Tenant is required to commission an EPC, the Tenant must (at the Landlord's option) commission an EPC from an assessor approved by the Landlord or pay the Landlord's costs of commissioning an EPC for the Premises.

6.7.2 The Tenant must not commission an Action Plan in respect of the Premises.

6.7.3 The Tenant must co-operate with the Landlord, so far as is necessary, to allow the Landlord to commission any EPC or Action Plan for the Premises and:

(a) provide the Landlord (at the Landlord's cost) with copies of any plans or other information held by the Tenant that would assist in commissioning that EPC or Action Plan; and

(b) allow such access to the Premises to any energy assessor appointed by the Landlord as is reasonably necessary to inspect the Premises for the purposes of preparing any EPC or Action Plan.

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61 The Assessment of Energy Performance of Non-Domestic Buildings (Scotland) Regulations 2016 apply to buildings or building units over 1000m² which do not meet 2002 or later building standards. Ultimate responsibility for compliance with the regulations rests with the building owner, although carrying out the measures or improvement works identified in an action plan can be delegated to a third party e.g. a tenant.

6.7.4 The Tenant must give the Landlord written details on request of the unique reference number of any EPC the Tenant commissions in respect of the Premises.

6.7.5 The Landlord must give the Tenant written details on request of the unique reference number of any EPC the Landlord commissions in respect of the Premises.

6.8 **[Sustainability]**

The Landlord and Tenant must comply with the provisions of Part 6 of the Schedule.][62]

7. **[Break Clause]**

7.1 [The Tenant may terminate this Lease on [any] [the] Break Date by giving the Landlord formal notice of not less than [*Insert length*] months [specifying the Break Date][63] following which the Term will end on that Break Date[if:[64]

7.1.1 on the Break Date the Rent due on or before that Break Date and any VAT payable on it has been paid in full; [and]

7.1.2 on the Break Date the Premises are free of the Tenant's occupation and the occupation of any other lawful occupier and there are no continuing subleases][65][; and

7.1.3 the Tenant has, on or before the Break Date, paid to the Landlord an amount equal to [*Insert figure/proportion of the Rent*] (plus any VAT payable on that amount)]].

7.2 The Landlord may waive any of the pre-conditions in [Clauses 7.1.1 to 7.1.3] at any time before the [relevant] Break Date by notifying the Tenant. A waiver by the Landlord of any of those pre-conditions will not affect the Tenant's liability under this Lease for the matters set out in those pre-conditions. [If the Landlord waives the pre-condition in Clause 7.1.3 and this Lease ends on the [relevant] Break Date, the Tenant must pay to the Landlord immediately after the [relevant] Break Date the sum specified in that Clause.]

7.3 [The break right in this Clause 7 is personal to the Tenant (here meaning [ ] Limited (Registered Number [ ])) and will end on the effective date of any permitted assignation of this Lease or on the date when the said [ ] Limited ceases to exist.]

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62 See FN61 above. As a consequence of the Assessment of Energy Performance of Non-Domestic Buildings (Scotland) Regulations 2016, the importance and necessity to include Part 6 of the Schedule ("Sustainability") has increased.

63 This wording is not required if the Tenant can end this Lease only on a single specified date.

64 The conditions in this break clause are consistent with the RICS professional standard "Code for Leasing Business Premises First Edition (February 2020)".

65 This wording is intended to ensure that the Tenant has given physical possession (ie removed itself and all of its fittings, furniture and equipment from the Premises) and that there are no subsisting occupation rights. However, the wording, in Scotland, may also be considered to include legal (vacant) possession where if the Tenant has not completely removed everything from the Premises by the Break Date (eg left behind some internal partitioning or furniture), it may lose its right to terminate the lease on the Break Date (Riverside Park Ltd v NHS Property Services Limited [2016] EWHC 1313 (Ch)). The Code for Leasing Business Premises in England & Wales published in March 2007 recommends that "The only pre-conditions to tenants exercising any break clauses should be that they are up to date with the main rent, give up occupation and leave behind no continuing subleases. Disputes about the state of the premises, or what has been left behind or removed, should be settled later (like with normal lease expiry)". The Tenant may, therefore, want to consider deleting this wording so that there can be no doubt that the right to break is preserved, leaving the Landlord with the usual remedies against the Tenant in the event that the Tenant has not given full legal and physical possession to the Landlord on the Break Date.

7.4 If this Lease ends under this Clause 7, this will not affect the rights of any party for any prior breach of an obligation in this Lease.[66]

7.5 Time is of the essence for the purposes of this Clause 7.]

8. **Jurisdiction**

8.1 This Lease and any non-contractual obligations arising out of or in connection with it will be governed by the law of Scotland.

8.2 Subject to Clause 8.3 and any provisions in this Lease requiring a dispute to be settled by an expert or by arbitration, the courts of Scotland have exclusive jurisdiction to decide any dispute arising out of or in connection with this Lease, including in relation to any non-contractual obligations.

8.3 Any party may seek to enforce an order of the courts of Scotland arising out of or in connection with this Lease, including in relation to any non-contractual obligations, in any court of competent jurisdiction.

9. **Consent to Registration**

The Landlord and the Tenant consent to registration of this Lease for preservation and execution: IN WITNESS WHEREOF this Lease consisting of this and the preceding [ ] pages together with the Schedule and the Plans are subscribed as follows:

[66] The obligation to repay any rent relating to the period after the Break Date is in Clause 5.3.

Schedule

This is the Schedule referred to in the foregoing lease between [ ] and [ ]

Part 1
Tenant's Rights[67]

[Except in the case of exclusive rights granted to the Tenant, the] [The] following rights are granted to the Tenant in common with the Landlord and any person authorised by the Landlord but subject to the Landlord's rights:[68]

1. **Running of services**

   To connect to and use the Conducting Media connecting the Premises to the public mains for the passage of Supplies from and to the Premises.

2. **Support and shelter**

   Support and shelter for the Premises from any adjoining premises owned by the Landlord.

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67 Appropriate rights will be property-specific in each case.

68 Where the Premises connect directly to the public mains for all services and the Landlord does not own adjoining premises, it will not be necessary to grant the Tenant any rights on the grant of this Lease.

Part 2
Landlord's Reserved Rights

The following rights are excepted and reserved to the Landlord:

3. **Support, shelter, light and air**

1.1 Support and shelter for any adjoining premises owned by the Landlord from the Premises.

1.2 All rights of light or air to the Premises that now exist or that might (but for this reservation) be acquired over any other land.

4. **Entry on to the Premises**[69]

1.3 To enter the Premises to:

1.3.1 review or measure the Environmental Performance of the Premises including to install, inspect, clean, maintain, replace and to take readings from metering equipment, heat cost allocators and thermostatic radiator valves within or relating to the Premises and to prepare and display an EPC, Action Plan or Display Energy Certificate; and

1.3.2 estimate the current value or rebuilding cost of the Premises for insurance or any other purpose.

1.4 If the relevant work cannot be reasonably carried out without entry onto the Premises, to enter them to:

1.4.1 build on or into any boundary or party walls on or adjacent to the Premises; and

1.4.2 inspect, repair, alter, decorate, rebuild or carry out other works on any adjoining premises owned by the Landlord.

1.5 To enter the Premises to carry out or implement any Recommended Improvement Measures, Operational Rating Measures or any other works or measures to implement any Action Plan (or any other similar or replacement obligation) declaring that nothing in this paragraph 2.3 restricts or prevents the Landlord from enforcing any of the Tenant's obligations that would otherwise require the Tenant to carry out or implement, or to meet the whole or part of the cost of carrying out or implementing, any such works or measures.

1.6 To enter the Premises to do anything that the Landlord has the express right to do or is required to do under this Lease or for any other reasonable purpose in connection with this Lease.

5. **[Roofs**

The right to place plant, machinery or equipment on the roof of the Premises and a right of access to the roof along such route as the Landlord may require.]

6. **Adjoining premises**

Subject to Clause 6.4, to carry out works of construction, demolition, alteration or redevelopment on any adjoining premises (and to permit others to do so) as the Landlord in its absolute discretion considers fit (whether or not these works interfere with the flow of light and air to the Premises) and the right in connection with those works to underpin and shore up the Premises.

7. **Plant, equipment and scaffolding**

The right, where necessary, to bring plant and equipment onto the Premises and to place scaffolding and ladders on the exterior of or outside any buildings on the Premises in exercising the Landlord's rights under this Lease.

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[69] The safeguards that tenants ordinarily look for where a landlord has a right of entry are contained in Clause 5.4 (Landlord's Obligations). There is no need to repeat them in this Part of the Schedule.

Part 3
Rent Review[70]

8. **Defined terms**

This Part of the Schedule uses the following definitions:

"**Assumptions**" means that:

(a) if the Premises have been damaged or destroyed, they have been reinstated before the Rent Review Date;

(b) the Premises are fit for immediate occupation and use by the willing tenant and are ready to receive the willing tenant's fitting-out works;[71]

(c) the Premises may lawfully be let to and used for the Permitted Use by any person throughout the term of the Hypothetical Lease;

(d) the Tenant has complied with the Tenant's obligations in this Lease and (except to the extent that there has been a material and persistent breach by the Landlord) the Landlord has complied with the Landlord's obligations in this Lease; and

(e) the willing tenant has received the benefit of either:

(i) a rent-free period of such length as is required by the willing tenant to reflect the time required in order to carry out its fitting-out works at the Premises, that rent-free period having expired immediately prior to the commencement of the Hypothetical Lease; or

(ii) a rent concession or any other inducement of equal value to that rent-free period.[72]

"**Disregards**" means the following:

(a) any effect on rent of the Tenant (and the Tenant's predecessors in title and lawful occupiers) having been in occupation of the Premises;

(b) any goodwill accruing to the Premises because of the Tenant's business (and that of the Tenant's predecessors in title and lawful occupiers);

(c) any special bid that the Tenant or any other party with a special interest in the Premises might make by reason of its occupation of any adjoining premises;

(d) any increase in rent attributable to any improvement, including any tenant's initial fitting-out works[and any Prior Lease Alterations][73], whether or not within the Premises:

(i) carried out by and at the cost of the Tenant or the Tenant's predecessors in title or lawful occupiers before or during the Term;

(ii) carried out with the written consent, where required, of the Landlord or the Landlord's predecessors in title; and

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70 This Part of the Schedule contains an open market review. There is no attempt to review to a headline rent.

71 There is deliberately no assumption that the Premises are fitted-out. If the Premises are to be valued on the assumption that they are handed over to the Tenant in a specific state (such as shell and core with capped services) then a rent review specification will be needed and an additional assumption added that the Premises are handed over to the willing tenant in the state set out in the specification.

72 This assumption is considered to be neutral. There is no attempt to review to a headline rent.

73 If this Lease follows on from a pre existing lease with the Tenant or on a lease re-gearing consider carefully the extent of the Premises to be taken into account on a rent review under this Lease and whether works carried out under the Prior Lease should be taken into account or disregarded for the purposes of rent review

(iii) not carried out pursuant to an obligation to the Landlord or the Landlord's predecessors in title (but any obligations relating to the method or timing of works in this Lease or any other document giving consent will not be treated as an obligation for these purposes);

(e) any reduction in rent attributable to works that have been carried out by the Tenant (or the Tenant's predecessors in title or lawful occupiers); [and]

(f) any reduction in rent attributable to any temporary works, operations or other activities on any adjoining premises[; and

(g) any effect on rent of the floor area of any mezzanine floor installed within the Premises by the Tenant (or the Tenant's predecessors in title or lawful occupiers) but not the fact that a mezzanine floor can lawfully be installed within the Premises without the need for any further planning or other consents][74].

"**Hypothetical Lease**" means a lease:

(a) of the whole of the Premises;

(b) on the same terms as this Lease (including this Part of the Schedule) except for:

(i) the amount of Rent payable immediately before the Rent Review Date;

(ii) any rent-free period, rent concession or any other inducement received by the Tenant in relation to the grant of this Lease; [and]

(iii) any break clause in this Lease, other than any right to terminate in Part 4 of the Schedule[75][; and

(iv) [*Insert any other specific exclusions*]];

(c) by a willing landlord to a willing tenant;

(d) with vacant possession;

(e) without any premium payable by or to the willing tenant;

(f) for a term of [*Insert length*] years starting on the Rent Review Date;

(g) with a rent commencement date on the Rent Review Date; [and]

(h) with rent review dates every [five] years[; and

(i) with a right for the tenant to bring the Hypothetical Lease to an end on[or at any time after] the [*Insert number*] anniversary of the date on which the term starts][76].

"**Market Rent**" means the yearly rent at which the Premises might reasonably be expected to be let on the open market on the Rent Review Date, on the terms of the Hypothetical Lease and applying the Assumptions and the Disregards.[77]

9. **Rent review**

1.1 On the Rent Review Date, the Rent is to be reviewed to the higher of:

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74 In any case where the Tenant may be able to install a mezzanine floor (or if one is already present) you should include paragraph (g) of this definition.

75 All break clauses in this Lease are ignored (other than those that arise following a failure to reinstate insured or uninsured damage in Part 4 of the Schedule). Any corresponding break clauses in the Hypothetical Lease should be included in paragraph (i) of this definition. Where there is a rent-free period or concessionary rent that follows the non-exercise of the break clause, consider including a specific exclusion of it.

76 Consider the treatment of break clauses in the Hypothetical Lease.

77 Current market practice is generally not to use the expression "best rent".

1.1.1 the Rent payable immediately before the Rent Review Date; and

1.1.2 the Market Rent.

1.2 The reviewed Rent will be payable from and including the Rent Review Date.

10. **Dispute resolution**

1.3 The Market Rent at the Rent Review Date may be agreed between the Landlord and the Tenant. If they have not done so (whether or not they have tried) by [the date three months before] the Rent Review Date, either the Landlord or the Tenant can require the Market Rent to be decided by an independent [expert] [arbitrator][78]. If the Landlord and the Tenant do not agree on who should decide the Market Rent, the [expert] [arbitrator] will be appointed by the Chair (or other senior office holder) for the time being of the Royal Institution of Chartered Surveyors in Scotland (as constituted, re-constituted, formed or re-formed from time to time) on the application of either the Landlord or the Tenant. [The seat of the arbitration will be Scotland and the reference to the arbitration will take effect subject to and in accordance with the Arbitration (Scotland) Act 2010.][79]

1.4 [The expert will:

1.4.1 invite the Landlord and the Tenant to submit to them a proposal for the Market Rent with any relevant supporting documentation;

1.4.2 give the Landlord and the Tenant an opportunity to make counter submissions;

1.4.3 give written reasons for their decisions, which will be binding on the parties; and

1.4.4 be paid by the Landlord and the Tenant in the shares and in the manner that the expert decides (or failing a decision, in equal shares).]

1.5 The [expert] [arbitrator] must be an independent chartered surveyor of not less than 10 years' standing who is experienced in the rental valuation of property similar to the Premises and who knows the local market for such premises.

1.6 If the [expert] [arbitrator] dies, becomes unwilling or incapable of acting or it becomes apparent for any other reason that the [expert] [arbitrator] will be unable to decide the Market Rent within a reasonable time, the [expert] [arbitrator] may be replaced by a new [expert] [arbitrator] who must be appointed on the terms set out in this paragraph 3.

1.7 Responsibility for the costs of referring a dispute to an [expert] [arbitrator], including costs connected with the appointment of the [expert] [arbitrator] will be decided by the [expert] [arbitrator] and failing a decision, they will be shared equally between the parties.

11. **Consequences of delay in agreeing the revised rent**

If, by the Rent Review Date, the reviewed Rent has not been ascertained, then:

1.8 the Rent payable under this Lease immediately before the Rent Review Date will continue to be payable until the reviewed Rent has been ascertained;

1.9 following the date on which the reviewed Rent has been ascertained, the Tenant will pay to the Landlord on demand:

11.1.1 the difference (if any) between the Rent previously payable and the amount that would have been payable had the reviewed Rent been ascertained before the Rent Review Date; and

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78 Consider which option the client prefers for resolving rent review disputes.

79 Consider whether the parties wish any of the non-mandatory Scottish Arbitration Rules to be disapplied at this stage.

11.1.2 interest at [three][80] per cent below the Interest Rate calculated on a daily basis on each instalment of that difference from and including the date on which each instalment would have become payable had the Rent been ascertained before the Rent Review Date to and including the date of the Landlord's demand[81].

12. **Rent review memorandum[82]**

When the Market Rent has been ascertained, a memorandum recording the Rent payable on review must be entered into. The Landlord and the Tenant will each bear their own costs in relation to that memorandum, except that the Tenant must pay to the Landlord the dues of registering that memorandum in the Books of Council and Session and of obtaining an electronic extract or, if that is not possible to obtain, an extract for each party.

13. **Time not of the essence**

For the purpose of this Part of the Schedule time is not of the essence.[83]

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80 Possible need to calibrate with the corresponding chosen Interest Rate to achieve a base rate "outcome".

81 Note that interest at the base rate stops accruing on the date of demand and will not be payable in respect of the period from the date of demand until the date of payment. However, if payment is not made within 10 Business Days of the demand, the amount due will be treated as rent in arrears and interest will be payable at 3% above base rate from the date of the demand to the date of payment under **Clause** 4.4.

82 Please refer to the PSG Rent Review Memorandum in this context.

83 A decision has been taken not to include provisions to circumvent any statutory restrictions on implementing rent reviews or to nominate an extra rent review date when any restrictions cease to have effect.

Part 4
Insurance and Damage Provisions

14. **Interpretation**

In this Part of the Schedule references to the Premises do not include Excluded Tenant's Works.

15. **Tenant's insurance obligations**

1.1 The Tenant must pay on demand:

1.1.1 the whole of:

(a) the sums the Landlord pays[84] to comply with paragraph 3.1 of this Part of the Schedule;

(b) the cost of valuations of the Premises for insurance purposes made not more than once a year; and

(c) the amount of any excess or deductible under any insurance policy that the Landlord incurs or will incur in complying with paragraphs 3.3 and 3.4 of this Part of the Schedule;

1.1.2 a sum equal to the amount that the insurers refuse to pay following damage or destruction by an Insured Risk to the Premises because of the Tenant's wilful act or failure to act; and

1.1.3 any additional or increased premiums that the insurers may require as a result of the carrying out or retention of any Permitted Works or the Tenant's or any subtenant's or other lawful occupier's use of the Premises.

1.2 The Tenant must comply with the requirements of the insurers and must not do anything that may invalidate any insurance.

1.3 The Tenant must not use the Premises for any purpose or carry out or retain any Permitted Works that may make any additional premium payable for the insurance of the Premises, unless it has first agreed to pay the whole of that additional premium.

1.4 The Tenant must notify the Landlord as soon as practicable after it becomes aware of any damage to or destruction of the Premises by any of the Insured Risks or by an Uninsured Risk.

1.5 The Tenant must keep insured, in a sufficient sum and with a reputable insurer, public liability risks relating to the Premises.

16. **Landlord's insurance obligations[85]**

1.6 The Landlord must insure (with a reputable insurer):

1.6.1 the Premises against the Insured Risks in their full reinstatement cost (including all professional fees and incidental expenses, debris removal, site clearance and irrecoverable VAT);

1.6.2 against public liability relating to the Premises; and

1.6.3 loss of the Rent for the Risk Period,

subject to all excesses, limitations and exclusions as the insurers may impose and otherwise on the insurers' usual terms.

1.7 In relation to the insurance, the Landlord must:

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[84] Note that Clause 2.12 already requires the amounts to be reasonable and proper.

[85] The Landlord is obliged to insure the Premises and to reinstate them if they are damaged by an Insured Risk. The obligation to reinstate does not extend to reinstating tenant's fixtures.

1.7.1 procure the Tenant's right to the Premises is noted either specifically or generically on the policy;

1.7.2 take reasonable steps to procure that the insurers waive any rights of subrogation they might have against the Tenant (either specifically or generically);

1.7.3 notify the Tenant promptly of all material variations; and

1.7.4 provide the Tenant with a summary of its main terms on the Tenant's written request.

1.8 The Landlord must take reasonable steps to obtain any consents necessary for the reinstatement of the Premises following destruction or damage by an Insured Risk.

1.9 Where it is lawful to do so, the Landlord must reinstate the Premises following destruction or damage by an Insured Risk as soon as reasonably practicable after the date of that damage or destruction. Reinstatement need not be identical if the replacement is similar in size, quality and layout.

1.10 The Landlord's obligations under paragraphs 3.3 and 3.4 of this Part of the Schedule will not apply unless and until the Tenant has paid the amounts referred to in paragraph 2.1.1(c) and, where applicable, paragraph 2.1.2 of this Part of the Schedule.

1.11 If there is destruction or damage to the Premises by an Uninsured Risk that leaves the whole or substantially the whole of the Premises unfit for occupation and use and the Landlord notifies the Tenant within 12 months afterwards that the Landlord wishes to reinstate, paragraphs 3.3 and 3.4 of this Part of the Schedule will then apply as if the damage or destruction had been caused by an Insured Risk.

1.12 Subject to the insurance premiums being reasonable and proper and reasonably and properly incurred, the Landlord may retain all insurance commissions for its own benefit.

17. **Rent suspension**

1.13 Paragraph 4.2 of this Part of the Schedule will apply if the Premises are destroyed or damaged by any Insured Risk [or Uninsured Risk][86] so that the Premises are unfit for occupation or use. Paragraph 4.2 of this Part of the Schedule will not apply to the extent that the Landlord's insurance has been vitiated or payment of any policy moneys refused because of anything the Tenant does or fails to do and the Tenant has not complied with paragraph 2.1.2 of this Part of the Schedule.

1.14 Subject to paragraph 4.1 of this Part of the Schedule, the Rent or a fair proportion of it, will not be payable from and including the date of damage or destruction until the earliest of:

1.14.1 the date that the Premises are again fit for occupation and use and ready to receive tenant's fitting out works;

1.14.2 the end of the Risk Period; and

1.14.3 the End Date.

1.15 If paragraph 4.2 of this Part of the Schedule applies before the Rent Commencement Date, the number of days between the date of the damage or destruction and the Rent Commencement Date (or where only a proportion of the Rent is or would have been suspended, an equivalent proportion of those days) will be added to the date the rent suspension ends and the resulting date will become the Rent Commencement Date.

1.16 If paragraph 4.2 of this Part of the Schedule applies:

1.16.1 the Landlord must refund to the Tenant, as soon as reasonably practicable, a due proportion of any Rent paid in advance that relates to any period on or after the date of damage or destruction; and

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[86] Consider whether and from which date rent suspension should apply following uninsured damage.

1.16.2 the Tenant must pay to the Landlord on demand the Rent for the period starting on the date it again becomes payable to (but excluding) the next Rent Day.

1.17 Any dispute about the application of this paragraph 4 will be decided at the request of either the Landlord or the Tenant by a single arbitrator under the Arbitration (Scotland) Act 2010.[87]

18. **Termination**

1.18 This paragraph 5 applies if there is destruction or damage to the Premises by an Insured Risk [or an Uninsured Risk] that leaves the whole or substantially the whole of the Premises unfit for occupation and use.

1.19 [If the damage or destruction is caused by an Uninsured Risk and:

1.19.1 the Landlord does not give the Tenant formal notice within 12 months after the damage or destruction that the Landlord wishes to reinstate, this Lease will end on the last day of that 12 month period; or

1.19.2 the Landlord gives the Tenant formal notice that the Landlord does not wish to reinstate, this Lease will end on the date of that notification by the Landlord;]

1.20 If, when the Risk Period ends, the Premises have not been reinstated sufficiently so that the Premises are again fit for occupation and use and ready to receive tenant's fitting out works, either the Landlord or the Tenant may end this Lease immediately by giving formal notice to the other at any time after the end of the Risk Period but before such reinstatement has been completed. The exercise of this right by the Tenant is subject to the Tenant complying with paragraph 2.1.1(c) and, where applicable, paragraph 2.1.2 of this Part of the Schedule.

1.21 [For the purposes of paragraphs 4.2.2 and 5.3 of this Part of the Schedule, if the damage or destruction is caused by an Uninsured Risk, the Risk Period will be treated as beginning on the date the Landlord notifies the Tenant of its wish to reinstate under paragraph 3.6 of this Part of the Schedule.]

1.22 If this Lease ends under this paragraph 5:

1.22.1 that will not affect the rights of any party for any prior breaches;

1.22.2 the Tenant must give vacant possession of the Premises to the Landlord; and

1.22.3 the Landlord may retain all insurance moneys.

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[87] Consider whether the parties wish any of the non-mandatory Scottish Arbitration Rules to be disapplied at this stage.

Part 5
Permitted Works[88]

19. **Defined terms**

This Part of the Schedule uses the following definitions:

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

"**Consents**" means all necessary permissions, licences and approvals for the Permitted Works required under:

(a) the Planning Acts and any other Act, including the building and fire regulations;

(b) any bye law or regulation of any competent authority; or

(c) any obligations or provisions affecting the Premises or otherwise required from owners, tenants or occupiers of any part of any adjoining premises; and

"**Prohibited Materials**" means any products or materials that:

(a) do not conform to relevant standards or codes of practice; or

(b) are generally known within the construction industry at the time of specification to be deleterious to health and safety or the durability of buildings or structures in the particular circumstances in which they are specified for use.

20. **Tenant's obligations in relation to Permitted Works**

1.1 Before starting any Permitted Works the Tenant must:

1.1.1 obtain and provide the Landlord with copies of any Consents that are required before they are begun;

1.1.2 fulfil any conditions in the Consents required to be fulfilled before they are begun;

1.1.3 notify the Landlord of the date on which the Tenant intends to start the Permitted Works;

1.1.4 provide the Landlord with any information relating to the Permitted Works as may be required by its insurers; and

1.1.5 ensure that it or its building contractor has put in place public liability and employers' liability insurance of at least £[5] million in respect of each claim and provided the Landlord with a summary of the main terms of the insurance and evidence that the premiums have been paid.

1.2 If it starts any Permitted Works, the Tenant must carry out and complete them:

1.2.1 as soon as reasonably practicable, and in any event before the End Date;[89]

1.2.2 in accordance with any drawings, specifications and other documents relating to the Permitted Works that the Landlord has approved;

1.2.3 in a good and workmanlike manner and with good quality materials;

1.2.4 without using Prohibited Materials;

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88 This Part of the Schedule sets out the standard provisions that will apply when the Tenant carries out works. The inclusion of this Part of the Schedule will enable the Landlord to grant consent to Tenant's works of a routine nature by reference to the obligations in this Part of the Schedule without the need for a detailed licence for alterations.

89 If you want the Tenant to complete any works to the Premises within a set period after work has commenced, you will need to provide for this specifically in this paragraph.

1.2.5 in compliance with the Consents and all Acts (including the Planning Acts) and with the requirements of the insurers of the Premises and (where applicable) of any competent authority or utility provider;

1.2.6 without affecting the structural integrity of the Premises; and

1.2.7 with as little interference as reasonably practicable to the owners and occupiers of any adjoining premises.

1.3 The Tenant must make good immediately any physical damage caused by carrying out the Permitted Works.

1.4 The Tenant must permit the Landlord to enter the Premises to inspect the progress of the Permitted Works.

1.5 Where the Landlord has given the Landlord's consent to any Permitted Works, the Tenant must comply with any additional obligations in relation to those Permitted Works that the Landlord lawfully imposes on the Tenant in giving the Landlord's consent.[90]

1.6 As soon as reasonably practicable following completion of the Permitted Works the Tenant must:

1.6.1 notify the Landlord of their completion;

1.6.2 obtain any Consents that are required on their completion;

1.6.3 remove all debris and equipment used in carrying out the Permitted Works;

1.6.4 notify the Landlord of the cost of the Permitted Works;

1.6.5 permit the Landlord to enter the Premises to inspect the completed Permitted Works;

1.6.6 give to the Landlord:

(a) as-built plans, drawings and specifications showing the Permitted Works; and

(b) if required, information in sufficient detail for an accurate assessment to be made of the effect of the Permitted Works on the Environmental Performance or any EPC Rating or any other environmental rating of the Premises; and

1.6.7 ensure that the Landlord is able to use and reproduce the as-built plans, drawings, specifications and other information provided under paragraph 2.6.6 for any lawful purpose.

1.7 If the CDM Regulations apply to the Permitted Works, the Tenant must:

1.7.1 comply with them and ensure that any person involved in the management, design and construction of the Permitted Works complies with their respective obligations under the CDM Regulations;

1.7.2 if the Landlord would be treated as a client for the purposes of the CDM Regulations, agree to be treated as the only client in respect of the Permitted Works; and

1.7.3 on completion of the Permitted Works provide the Landlord with a copy of any health and safety file relating to the Permitted Works and deliver the original file to the Landlord at the End Date.

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[90] If you want to impose an obligation on the Tenant to begin any works to which Landlord's consent has been given, you will need to provide for this specifically in this paragraph.

1.8 If the Permitted Works invalidate or materially adversely affect an existing EPC or require the commissioning of an EPC, the Tenant must (at the Landlord's option):

1.8.1 commission a new EPC and give the Landlord written details of the unique reference number for that EPC; or

1.8.2 pay the Landlord's costs of doing so.

21. **No warranty relating to Permitted Works**

The Landlord gives no express or implied warranty (and the Tenant acknowledges that the Tenant must satisfy itself):

1.9 as to the suitability, safety, adequacy or quality of the design or method of construction of any Permitted Works;

1.10 that any Permitted Works may lawfully be carried out;

1.11 that the structure, fabric or facilities of the Premises are able to accommodate any Permitted Works; or

1.12 that any of the services supplying the Premises will have sufficient capacity for and will not be adversely affected by any Permitted Works.

Part 6
Sustainability[91]

22. **Co-operation to improve Environmental Performance**

The Landlord and the Tenant:

1.1 [confirm that wherever reasonably practicable, they intend to promote and Improve the Environmental Performance of the Premises; and

1.2 must co-operate with each other to identify appropriate strategies to Improve the Environmental Performance of the Premises.]

OR[92]

1.3 [confirm that wherever reasonably practicable, they intend to promote and Improve the Environmental Performance of the Premises; and

1.4 must co-operate with each other to ensure that the Recommended Improvement Measures or the Operational Rating Measures contained within any Action Plan for the Premises are carried out and implemented in accordance with the provisions in the Action Plan.]

23. **Data sharing**

1.5 The Landlord and the Tenant must share with the other the energy, water and Waste data they hold relating to the Premises and such other Environmental Performance data as may be agreed from time to time by the parties. The energy, water and Waste data and any other data the parties agree to share must be shared on a regular basis [(but not less frequently than monthly/quarterly/annually)] with each other, any managing agents appointed by the Landlord and with any third party who the Landlord or the Tenant (or both of them) (acting reasonably) believes needs to receive that data including for the purpose of any reporting or advice subject to the provisions of paragraph 2.2.

1.6 The Landlord and the Tenant must keep and must ensure their agents or advisers keep that data confidential except that they have the right to use that data for any of the following:

1.6.1 complying with the provisions of the AEP Regulations including the production and/or implementation of any Action Plan;

1.6.2 monitoring and Improving the Environmental Performance of the Premises;

1.6.3 measuring the Environmental Performance of the Premises against any agreed or other targets; and

23.1.1 any reporting required by any Act or regulation or any voluntary certification or rating scheme affecting the Premises or the Landlord or the Tenant or required by any finance arrangements of either the Landlord or the Tenant.

23.2 Where the Landlord, the Tenant or their agents or advisers use the Environmental Performance data for any reporting, that party must ensure that they and their agents or advisers ensure that all data is anonymised.

23.3 The Landlord and the Tenant must each nominate a point of contact responsible for data sharing and must promptly notify the other where this point of contact changes.

23.4 The Tenant authorises the Landlord to contact directly any third party that provides Supplies in respect of the Premises or who collects data in respect of those Supplies to obtain consumption

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91 If the parties want to include more detailed sustainability provisions, refer to the provisions in the Better Buildings Partnership's Green Lease Toolkit. This Part of the Schedule is not intended to impose onerous obligations in relation to sustainability issues but is intended to facilitate a discussion between the parties about these issues.

92 Include this wording where it has been determined that the Assessment of Energy Performance of Non-Domestic Buildings (Scotland) Regulations 2016 apply.

data in relation to the Premises. The Tenant must at the request of the Landlord provide any letter of authority that the third party requires to provide that data.

24. **Alterations**

The Tenant must take into consideration any impact on the Environmental Performance of the Premises from any proposed works to or at the Premises.

Part 7
Subletting

25. **Defined terms**

This Part of the Schedule uses the following definitions:

"**Approved Sublease**" means a sublease approved by the Landlord and, subject to any variations agreed by the Landlord in its absolute discretion:

(a) granted without any premium being received by the Tenant;

(b) reserving a market rent, taking into account the terms of the subletting;

(c) [for a term of not less than [*Insert number*] years calculated from the date of entry under the sublease;]

(d) containing provisions:

(i) requiring the Subtenant to pay the whole or, in the case of a sublease of a Permitted Part, a due proportion, of the Insurance Costs and other sums (excluding the Rent) payable by the Tenant under this Lease;

(ii) for rent review at [five yearly] intervals and otherwise on the same terms as in Part 3 of the Schedule;[93] and

(iii) for change of use and alterations corresponding to those in this Lease;

(e) in the case of a Sublease of a Permitted Part, containing provisions requiring the Subtenant to pay by way of a yearly service charge a fair and reasonable proportion of the costs incurred by the Tenant in providing all services to the Premises that would be usual on a subletting of part, including the payment of quarterly advance payments and a balancing payment at the end of each service charge year;

(f) containing an obligation on the Subtenant not to assign the Subtenant's right to the whole of the Sublet Premises without the prior written consent[94] of the Landlord and the Tenant on terms corresponding to those in this Lease and an obligation not to assign the Subtenant's right to part only of the Sublet Premises;

(g) [containing an obligation on the Subtenant not to enter into any Sub-underlease of the whole or any part of the Sublet Premises] **OR** [containing an obligation on the Subtenant not to enter into any Sub-underlease of the whole of the Sublet Premises without the prior written consent of the Landlord and the Tenant and an obligation on the Subtenant not to enter into any Sub-underlease of any part of the Sublet Premises] **OR** [containing an obligation on the Subtenant not to enter into any Sub-underlease of the whole or any part of the Sublet Premises without the prior written consent of the Landlord and the Tenant];[95]

(h) [containing provisions requiring any Sub-underlease to contain:

(i) obligations by the Sub-undertenant not to assign the Sub-undertenant's right to the whole of the premises let under the Sub-underlease without the prior written consent of the Landlord, the Tenant and the Subtenant and an obligation not to assign the Sub-undertenant's right to part only of the Sub-underlet Premises; and

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93 Some landlords may require the rent review dates in the Sublease to coincide with those in this Lease even if this means that the first rent review falls within the first five years of the grant of the Sublease.

94 Although the interpretation clause in this Lease states that references to a consent are to a prior written consent, the full form of wording has been included in this definition as the relevant interpretation clause may not be included in the Sublease.

95 Take specific instructions on whether a Subtenant should have the right to sub-underlet. Paragraph (h) of this definition will not be required if sub-underletting is prohibited.

(ii) an absolute prohibition on entering into further subleases of whole or part [except where the Sub-underlease is of the whole of the Premises when the Sub-underlease may contain provisions permitting the creation of one further sublease of whole with the prior consent of the Landlord, the Tenant and the Subtenant but with the additional provision that no subleases of whole or part will be created out of that further sublease];] and

(i) containing other provisions corresponding with those in this Lease;

"**Approved Subtenant**" means a person approved by the Landlord;

["**Permitted Part**" means any part of the Premises that the Landlord approves;]

"**Sublease**" means the sublease entered into following the approval of an Approved Sublease;

"**Sublet Premises**" means the premises let by a Sublease; [and]

"**Subtenant**" means the Approved Subtenant to whom the Tenant grants a Sublease[;

"**Sub-underlease**" means any sub-underlease derived from a Sublease;

"**Sub-underlet Premises**" means the premises let by a Sub-underlease; and

"**Sub-undertenant**" means any tenant under a Sub-underlease].

26. **Right to sublet**

1.1 [Subject to paragraph 2.2 of this Part of the Schedule, the] [The] Tenant may, with the Landlord's consent, sublet the whole of the Premises [or the whole of a Permitted Part] by an Approved Sublease to an Approved Subtenant.

1.2 [The grant of a Sublease [or a Sub-underlease] must not result in the Premises being divided into more than [*Insert number*] self-contained units of occupation, taking into account any existing Subleases[or Sub-underleases].]

27. **Obligations in relation to Subleases**

1.3 The Tenant must ensure the Subtenant complies with the terms of its Sublease [and any Sub-undertenant complies with the terms of its Sub-underlease].

1.4 The Tenant must not reduce, defer, accelerate or commute any rent payable under any Sublease.

1.5 On any review of the rent payable under any Sublease, the Tenant must:

1.5.1 review the rent payable under the Sublease in compliance with its terms;

1.5.2 not agree the reviewed rent (or the appointment of any third party to decide it) without the Landlord's approval;

1.5.3 include in the Tenant's representations to any third party any representations that the Landlord may require; and

1.5.4 notify the Landlord what the reviewed rent is within two weeks of its agreement or resolution by a third party.

1.6 The Tenant must not vary the terms or accept any renunciation of any Sublease without the Landlord's approval.

Part 8
Plans [96]

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[96] The signatories of this Lease should sign this page as well as each plan which is included in this Part of the Schedule.