

TRIPARTITE LICENCE FOR WORKS AGREEMENT



among

[] Limited

and

[] Limited

and

[] Limited

[with the consent of

[] LIMITED [and [] LIMITED]]

Property: []

Version 1
May 2022



LICENCE FOR WORKS AGREEMENT

among

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

and

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

and

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

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

WHEREAS:

- (A) The Landlord is the landlord under the Lease;
- (B) The Tenant is the tenant under the Lease and the Subtenant is the tenant under the Sublease; [and]
- (C) [The Guarantor is the guarantor of the Tenant's obligations under the Lease [and the Subtenant's Guarantor is the guarantor of the Subtenant's obligations under the Sublease]; and]
- (D) [The Subtenant has requested, and the Landlord and the Tenant have granted, consent to the Works on the conditions set out below] [The Subtenant has carried out the Works and the Landlord and the Tenant have agreed to grant retrospective consent to the Works on the conditions set out below].¹

IT IS AGREED BY THE PARTIES AS FOLLOWS:

1. Definitions and Interpretation

1.1 Definitions

In this Agreement:

"**Business Day**" has the meaning given to it in the Lease;²

"**Conditions**" means the conditions set out in Part 1 of the Schedule;

"**Consents**" means all necessary permissions, licences and approvals for the Works under the Planning Acts, the building and fire regulations, and any other statute, bye law or regulation of any competent authority and under any obligations or provisions affecting the Property or any land or buildings of which the Property forms part and as otherwise required from owners, tenants or occupiers of any part of the land or buildings of which the Property forms part or any adjoining premises;

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

¹ Use second option if documenting retrospective consent.

² Ensure term defined in lease otherwise use "a day on which clearing banks in [Edinburgh, Glasgow and London] are open for normal business;".

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

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

"Plans" means the [plans, drawings, specifications and other documents] set out in Part 2 of the Schedule;

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

"Schedule" means the schedule annexed to this Agreement;

"Sublease" means the lease between [] and [] dated [] and registered in the Books of Council and Session on [] [and also recorded in the Division of the General Register of Sasines for the County of [] on []] [and the Subtenant's right to which is registered in the Land Register of Scotland under Title Number []];

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

"Works" means the works to the Property [to be]³ carried out by the Subtenant as shown on the Plans.

1.2 Interpretation

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

- 1.2.1 any reference to one gender includes all other genders;
- 1.2.2 words in the singular only include the plural and *vice versa*;
- 1.2.3 any reference to the whole is to be treated as including reference to any part of the whole;
- 1.2.4 any reference to a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors or permitted assignees and words importing individuals include corporations and *vice versa*;
- 1.2.5 any reference to a Clause, Condition, Schedule or Part of the Schedule is to the relevant Clause, Condition, Schedule or Part of the Schedule of or to this Agreement and reference, in any Part of the Schedule, to a numbered paragraph is a reference to the relevant numbered paragraph in that Part of the Schedule;
- 1.2.6 any reference to a statute or statutory provision includes any subordinate legislation which is in force from time to time under that statute or statutory provision;
- 1.2.7 any reference to any statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time taking account of any amendment or re-enactment;
- 1.2.8 any phrase introduced by the words "including", "include", "in particular" or any similar expression is to be construed as illustrative only and is not to be construed as limiting the generality of any preceding words;

³ Delete if documenting retrospective consent.

- 1.2.9 a document will be duly executed only if it is executed in such manner as meets the requirements of Section 3 or Sections 9B and 9C of the Requirements of Writing (Scotland) Act 1995;
- 1.2.10 where at any one time there are two or more persons included in the expression "Tenant" "Subtenant" [or "Guarantor"] [or "Subtenant's Guarantor"] obligations contained in this Agreement which are expressed to be made by the Tenant, the Subtenant [and/or the Guarantor] [and or the Subtenant's Guarantor] are binding jointly and severally on them and their respective executors and representatives whomsoever without the necessity of discussing them in their order but not so as to impose any continuing liability on an assignor following a permitted assignation of the tenant's right to the Lease;
- 1.2.11 any references to this Agreement or to any other document are references to this Agreement or to that other document as varied, supplemented, assigned, novated or replaced (in each case other than in breach of the provisions of this Agreement) from time to time;
- 1.2.12 any obligation on, or right granted or reserved to, the Landlord may be fulfilled or exercised by managing agents in place of or in addition to the Landlord;
- 1.2.13 any action to be performed on a day which is not a Business Day is to be performed on the immediately following Business Day;
- 1.2.14 references to writing or written do not include [faxes or] e-mail;
- 1.2.15 if the Tenant is a firm or partnership (other than a limited liability partnership):
- (a) the obligations of the Tenant under this Agreement are binding jointly and severally on all persons who are or become partners of the firm at any time and their respective executors and representatives whomsoever as well as on the firm and its whole stock, funds, assets and estate without the necessity of discussing them in their order;
 - (b) except in the circumstances set out in Clause 1.2.15(c) the obligations set out in Clause 1.2.15(a) remain in full force and effect even if:
 - (i) the firm or partnership is dissolved;
 - (ii) any changes take place in the firm or partnership whether by the assumption of a new partner or partners or by the retiral, bankruptcy or death of any individual partner; or
 - (iii) there is a change in the firm name.
 - (c) if any person, who by virtue of his being a partner, is bound to implement the Tenant's obligations, then on such person ceasing to be a partner the Landlord, on request, will release such person and his representatives from all obligations on the Tenant under this Agreement subsequent to the date when such person ceases to be a partner (or, if later, the date of such request) provided that it is established to the Landlord's reasonable satisfaction that any such release does not materially adversely affect the strength of the Tenant's financial covenant or their ability to implement their obligations under this Agreement;
- 1.2.16 if the Subtenant is a firm or partnership (other than a limited liability partnership):
- (a) the obligations of the Subtenant under this Agreement are binding jointly and severally on all persons who are or become partners of the firm at any time and their respective executors and representatives whomsoever as well as on the firm and its whole stock, funds, assets and estate without the necessity of discussing them in their order;

- (b) except in the circumstances set out in Clause 1.2.16(c) the obligations set out in Clause 1.2.16(a) remain in full force and effect even if:
 - (i) the firm or partnership is dissolved;
 - (ii) any changes take place in the firm or partnership whether by the assumption of a new partner or partners or by the retiral, bankruptcy or death of any individual partner; or
 - (iii) there is a change in the firm name.
- (c) if any person, who by virtue of his being a partner, is bound to implement the Subtenant's obligations, then on such person ceasing to be a partner the Landlord and the Tenant, on request, will release such person and his representatives from all obligations on the Subtenant under this Agreement subsequent to the date when such person ceases to be a partner (or, if later, the date of such request) provided that it is established to the Landlord's and the Tenant's reasonable satisfaction that any such release does not materially adversely affect the strength of the Subtenant's financial covenant or their ability to implement their obligations under this Agreement; and

1.2.17 where something is to be done "as soon as reasonably practicable" it is to be done without undue delay.

1.3 **Headings**

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

1.4 **Schedule**

The Schedule forms part of this Agreement.

2. **Grant of Consent**

The Landlord and the Tenant [CONSENT to the Subtenant carrying out the Works] [give retrospective CONSENT to the Works carried out by the Subtenant] on the terms set out in this Agreement.

3. **Subtenant's Obligations**

The Subtenant will comply in all respects with the Conditions.

4. **Remedying Breaches⁴**

4.1 If the Landlord or the Tenant requires the Subtenant to remedy any breach of the Subtenant's obligations under this Agreement then the Subtenant 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.

4.2 If the Subtenant does not comply with Clause 4.1, either the Landlord or the Tenant may enter the Property and carry out any works required itself. The Subtenant must repay, as a debt on demand, all the costs the Landlord or the Tenant incurs in so doing. The Landlord's rights under the Lease and the Tenant's rights under the Sublease will be unaffected.

5. **Lease Obligations**

5.1 On completion of the Works, all the Tenant's obligations contained in the Lease [and all the Guarantor's obligations] will apply *mutatis mutandis* to the Property in their then altered state.

⁴ Delete for retrospective consent.

- 5.2 On completion of the Works, all the Subtenant's obligations contained in the Sublease [and all the Subtenant's Guarantors obligations] will apply *mutatis mutandis* to the Property in its then altered state.

6. Rent Review

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

7. Reinstatement at Expiry

The reinstatement provisions in the Sublease will apply to reinstatement of the Works.⁵

8. Tenant's Obligations

- 8.1 The Tenant must, at the request of the Landlord but at the cost of the Tenant, enforce the Subtenant's obligations under this Agreement.
- 8.2 The Tenant must pay to the Landlord any increased insurance premium payable resulting from the carrying out and retention of the Works.
- 8.3 The Tenant must deliver the original health and safety file referred to in Condition 5.3 to the Landlord at the end of the term of the Lease.

9. Irritancy

- 9.1 The Landlord's right of irritancy contained in the Lease will be exercisable not only in the event of any breach by the Tenant of the Tenant's obligations contained in the Lease but also in the event of any breach of any of the Tenant's obligations contained in this Agreement.
- 9.2 The Tenant's 's right of irritancy contained in the Sublease will be exercisable not only in the event of any breach by the Subtenant of the Subtenant's obligations contained in the Sublease but also in the event of any breach of any of the Subtenant's obligations contained in this Agreement.

10. Third party indemnity

- 10.1 The Subtenant must indemnify the Landlord and the Tenant 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 and the Tenant's own liabilities, costs and expenses incurred in defending or settling any action, claim or demand in respect of any personal injury or death, damage to any property and any infringement of any right in each case arising from the carrying out of the Works.
- 10.2 In respect of any claim covered by the indemnity in Clause 10.1, the Landlord and the Tenant must:
- 10.2.1 give formal notice to the Subtenant of the claim as soon as reasonably practicable after receiving notice of it;
 - 10.2.2 provide the Subtenant with any information and assistance in relation to the claim that the Subtenant may reasonably require and the Landlord and/or the Tenant is lawfully able to provide, subject to the Subtenant paying to the Landlord and/or the Tenant all costs incurred by the Landlord and/or the Tenant in providing that information and assistance; and
 - 10.2.3 mitigate their loss (at the Subtenant's cost) where it is reasonable for the Landlord and/or the Tenant to do so.

⁵ Take instructions on whether any variation to the reinstatement obligations will be required in relation to the Works.

11. **Rights of Others**

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

12. **Costs**

12.1 The Subtenant will pay within 5 Business Days after written demand all costs and expenses, and any value added tax on them that cannot otherwise be recovered, reasonably and properly incurred by the Landlord, its solicitors, [architects] and surveyors and the Tenant, its solicitors, [architects] and surveyors [and any head landlord or any creditor in respect of the Landlord's right to the Lease and the Tenant's right to the Sublease] in connection with:

12.1.1 the approval of the Plans, any variations to the Plans and the approval of the Consents or other approvals or permissions given under this Agreement;⁶

12.1.2 the preparation, negotiation, execution and completion of this Agreement;

12.1.3 the monitoring and inspection of the Works during the course of the Works and after the completion of the Works; and⁷

12.1.4 the service of any notice, exercising of any rights and carrying out of any works under Clause 4.⁸

12.2 The Tenant will pay within 5 Business Days after written demand the costs of registering this Agreement in the Books of Council and Session and obtaining 3 extracts (1 for the Landlord, 1 for the Tenant and 1 for the Subtenant).

13. **[Guarantor's Consent**

The Guarantor:

13.1 consents to the terms of this Agreement; and

13.2 acknowledges that the guarantees and undertakings given by it will be enforceable not only in relation to the performance of the Tenant's obligations under the Lease but also in relation to the performance of the Tenant's obligations under this Agreement.]

14. **[Subtenant's Guarantor's Consent**

The Subtenant's Guarantor:

14.1 consents to the terms of this Agreement; and

14.2 acknowledges that the guarantees and undertakings given by it will be enforceable not only in relation to the performance of the Subtenant's obligations under the Sublease but also in relation to the performance of the Subtenant's obligations under this Agreement.]

15. **No Warranty**

The Landlord and the Tenant give no express or implied warranty (and the Subtenant acknowledges that the Subtenant [must satisfy] [has satisfied]⁹ itself):

15.1 as to the suitability, safety, adequacy or quality of the design or method of construction of the Works;

⁶ Delete for retrospective consent

⁷ Delete for retrospective consent

⁸ Delete for retrospective consent

⁹ Use second option if documenting retrospective consent.

- 15.2 that the Works [may lawfully be] [were lawfully] carried out;¹⁰
- 15.3 that the structure, fabric or facilities of the Property or any land or buildings of which it forms part are able to accommodate the Works; or
- 15.4 that any of the services supplying the Property or any land or buildings of which it forms part [will] have sufficient capacity for and [will not be] [are not] adversely affected by the Works.¹¹

16. **Contract (Third Party Rights)(Scotland) Act 2017**

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

17. **Ratification of Lease and Sub Lease**

Except in so far as amended by this Agreement, the Parties confirm that the whole provisions of the Lease and the Sublease will remain in full force and effect.

18. **Applicable Law and Jurisdiction**

This Agreement is governed by and is to be construed in accordance with the law of Scotland and in so far as not already subject to it, the parties irrevocably submit to the exclusive jurisdiction of the Scottish Courts.

19. **Consent to Registration**

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

¹⁰ Complete square brackets depending if retrospective consent or not.

¹¹ Complete square brackets depending if retrospective consent or not.

Schedule

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

Part 1
Conditions

1. **Defined terms**

1.1 This Part of the Schedule uses the following definitions:

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

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

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

"**Insured Risks**" means the Insured Risks defined in the Lease;

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

2. **Obligations before beginning the Works**

2.1 Before starting the Works the Subtenant must:

- 2.1.1 obtain and provide the Landlord and the Tenant with copies of any Consents that are required before the Works are begun and where required by the terms of the Sublease, obtain the Landlord's and the Tenant's approval to them [(such approval not to be unreasonably withheld or delayed)];
- 2.1.2 fulfil any conditions in the Consents required to be fulfilled before the Works are begun;
- 2.1.3 notify the Landlord and the Tenant of the date on which the Subtenant intends to start the Works; and
- 2.1.4 provide the Landlord and the Tenant with any information relating to the Works as may be required by their insurers.

2.2 If any variations to the Plans are required in order to obtain any of the Consents, the Subtenant must obtain the approval of the Landlord and the Tenant to those variations [(such approval not to be unreasonably withheld or delayed)].

2.3 The Subtenant must ensure that it or its building contractor has put in place public liability and employers' liability insurance of at least £[5] million¹² in respect of each claim and provide the Landlord and the Tenant with a summary of the main terms of the insurance and evidence that the premiums have been paid before starting the Works.

[Note: use the following for a retrospective consent (deleting the previous conditions)]

¹² Take instructions on level of insurance.

[The Subtenant confirms that before starting the Works:

- 2.4 it obtained any Consents that are required before the Works were begun;
- 2.5 it fulfilled any conditions in the Consents required to be fulfilled before the Works were begun; and
- 2.6 it or its building contractor put in place public liability and employers' liability insurance of at least £[5] million¹³ in respect of each claim.]

3. **Obligations when carrying out the Works**

- 3.1 [If it starts the Works, the Subtenant must carry out and complete them] [The Subtenant confirms that it carried out and completed the Works]:¹⁴
 - 3.1.1 diligently and without interruption, and in any event within [6] months after [];¹⁵
 - 3.1.2 in accordance with the Plans;
 - 3.1.3 in a good and workmanlike manner and with good quality materials;
 - 3.1.4 in accordance with the reasonable principles, standards and guidelines set out in any relevant guide or handbook published by the Landlord and/or the Tenant from time to time for tenant's works carried out at the Property;
 - 3.1.5 without using Prohibited Materials;
 - 3.1.6 [[during][outside] the hours of [TIME] to [TIME];]¹⁶
 - 3.1.7 in compliance with the Consents and all Acts (including the Planning Acts) and the requirements of the insurers of the Property and (where applicable) of any competent authority or utility provider;
 - 3.1.8 without affecting the structural integrity of the Property or any land or buildings of which it forms part; and
 - 3.1.9 with as little interference as reasonably practicable to the owners and occupiers of any other parts of the Property or any land or buildings of which the Property form part or any adjoining premises.
- 3.2 [If it has not already done so, the Subtenant]¹⁷ [The Subtenant] must make good immediately any physical damage caused by carrying out the Works.
- 3.3 The Subtenant must permit the Landlord and the Tenant to enter the Property to inspect the progress of the Works at all reasonable times subject, where applicable to the Landlord and the Tenant] complying with any conditions relating to entry onto the Property contained in the Sublease.¹⁸
- 3.4 All plant, equipment and materials used in connection with the Works must be stored securely.¹⁹

¹³ Take instructions on level of insurance.

¹⁴ Use second option if documenting retrospective consent.

¹⁵ Consider the period in the context of the particular works and what the starting point for that period is e.g. the Term Start Date, the date of last execution or date of conclusion of missives. Delete for retrospective consent.

¹⁶ Consider whether any restrictions need to be imposed by the Landlord on when the Works can be carried out. It may be appropriate to impose restrictions where the Lease is of part and the Landlord is concerned that there is no disruption to other users of the Landlord's property. Delete for retrospective consent.

¹⁷ For retrospective consent.

¹⁸ Delete for retrospective consent.

¹⁹ Delete for retrospective consent.

- 3.5 [Until practical completion of the Works, the Subtenant must] [The Subtenant confirms that, until practical completion of the Works it]:²⁰
- 3.5.1 insure[d] the Works and any plant, equipment and loose materials for their full reinstatement cost (including professional fees) against loss or damage by the Insured Risks with a reputable insurer [and provide[d] the Landlord and the Tenant with a summary of the main terms of the insurance policy and evidence that the premium has been paid]²¹; and
- 3.5.2 reinstate[d] any of the Works that are damaged or destroyed before their completion.
4. **Obligations on completion of the Works**
- 4.1 [As soon as reasonably practicable following completion of the Works] [If it has not already done so,]²² the Subtenant must:²³
- 4.1.1 notify the Landlord and the Tenant of completion of the Works;
- 4.1.2 obtain any Consents that are required on completion of the Works;
- 4.1.3 remove all debris and equipment used in carrying out the Works;
- 4.1.4 notify the Landlord and the Tenant of the cost of the Works;
- 4.1.5 permit the Landlord and the Tenant to enter the Property to inspect the completed Works at reasonable times subject, where applicable to complying with any conditions relating to entry onto the Property contained in the Sublease;
- 4.1.6 [provide the Landlord and the Tenant with a copy of any health and safety file relating to the Works prepared under the CDM Regulations and deliver the original file to the Tenant at the end of the term of the Sublease;]²⁴
- 4.1.7 supply the Landlord and the Tenant with 2 complete sets of as-built plans showing the Works; and
- 4.1.8 ensure that the Landlord and the Tenant are able to use and reproduce the as-built plans for any lawful purpose.
- 4.2 The Subtenant must pay to the Tenant and the Landlord any increased insurance premium payable resulting from the carrying out and retention of the Works.
5. **CDM Regulations²⁵**
- If the CDM Regulations apply to the Works, the Subtenant must:
- 5.1 comply with them and ensure that any person involved in the management, design and construction of the Works complies with their respective obligations under the CDM Regulations;
- 5.2 if the Landlord or the Tenant 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 Works; and
- 5.3 on completion of the Works provide the Landlord and the Tenant with a copy of any health and safety file relating to the Works and deliver the original file to the Tenant at the end of the term of the Sublease.

²⁰ Use second option if documenting retrospective consent.

²¹ Delete for retrospective consent.

²² For retrospective consent.

²³ Where the Works involve substantial structural elements consider whether collateral warranties are required.

²⁴ For retrospective consent.

²⁵ Delete for retrospective consent.

6. EPC

If the Works invalidate [or materially adversely affect]²⁶ an existing EPC or require the commissioning of an EPC, the Subtenant must (at the Landlord's option):

- 6.1 commission a new EPC and give the Landlord and the Tenant written details of the unique reference number for that EPC; or
- 6.2 pay the Landlord's costs of doing so.

²⁶ Check if there is any restriction on the Works materially adversely affecting the EPC rating of the Property in the Sublease and amend as appropriate

Plans