

# LICENCE TO OCCUPY



Our ref  
Your ref

[Date]

[Name and Address of Licensee's Solicitors]

Dear Sirs

## Licence to Occupy - [insert name of Property]

On behalf of and as instructed by the Licensors we offer to allow the Licensee to occupy and use the Property on the following conditions:

### 1. Definitions and interpretation

#### 1.1 In the Licence:

**"Ancillary Rights"** means [ ]

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

**"Date of Entry"** means [ ];

**"Date of Termination"** means the date upon which the Licence terminates;

**"Interest"** means interest on the sum in question at 4% per annum above the base rate from time to time of [ ] from the date that such sum is due for payment or, if there is no such date specified, the date of demand for such sum until such sum is paid;

**"Licence"** means the licence to occupy the Property constituted by this offer and all duly executed letters following on from it;

**"Licence Fee"** means the sum of £[ ] per [week] [calendar month];

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

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

**"Parties"** means the Licensor and the Licensee;

**"Permitted Use"** means [ ];

**"Plan"** means the demonstrative plan annexed to this offer;]

**"Property"** means [ ] [shown [ ] on the Plan];

**"Schedule of Condition"** means the schedule of condition annexed to this offer.]

1.2 In the Licence, 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 words importing individuals include corporations and *vice versa*;
- 1.2.5 any reference to a Clause, [Schedule or Part of the Schedule] is to the relevant Clause, [Schedule or Part of the Schedule] of [or to] the Licence;
- 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;
- 1.2.9 a document will be duly executed only if it is executed in such manner as meets the requirements of Section 3 of the Requirements of Writing (Scotland) Act 1995; and
- 1.2.10 where at any one time there are two or more persons included in the expression "Licensee" obligations contained in the Licence which are expressed to be made by the Licensee are binding jointly and severally on them and their respective executors and representatives whomsoever without the necessity of discussing them in their order.

1.3 The headings in the Licence are included for convenience only and are to be ignored in construing the Licence.

## 2. **Licence**

2.1 Subject to due compliance by the Licensee with its obligations under the Licence, the Licensor will permit the Licensee to occupy and use the Property for the Permitted Use [together with the Ancillary Rights and] with all necessary non-exclusive rights of access to and egress from the Property [from/to the public highway] [over the roads, footpaths and others [shown delineated [ ] on the Plan]] subject to all title conditions and rights of whatever nature affecting it.

2.2 The Licensee will occupy the Property as a mere licensee only and acknowledge that possession of the Property is retained by the Licensor subject to the rights created by the Licence.

- 2.3 The Parties agree that the Licence is not a lease and does not confer any tenancy rights on the Licensee.

### 3. **Duration**

- 3.1 The Licence will commence on the Date of Entry and will continue [to [ ]]] [from [week to week] [month to month] after that until terminated by either Party on delivering to the other Party not less than one [week's] [month's] written notice to the effect that they are terminating the Licence at the expiry of the period specified in the notice].

- 3.2 At the Date of Termination, the Licensee will:

- 3.2.1 remove from the Property with its whole equipment and other items, without the need for any notice from the Licensor, and
- 3.2.2 leave the Property in a condition consistent with full compliance with its obligations under the Licence.

### 4. **Payments**

- 4.1 [The Licensee will pay the Licence Fee to the Licensor by equal instalments in advance on [[ ] in each week] [the [ ] day of each month], the first payment being due on the Date of Entry in respect of the period from the Date of Entry to the next payment date, and [weekly] [monthly] after that, by banker's order if so required by the Licensor.] [No licence fee is payable by the Licensee to the Licensor for the grant of the Licence or its occupation and use of the Property.]

- 4.2 The Licensee will [also] pay for the duration of the Licence:

- 4.2.1 all rates, taxes, duties, levies, charges, assessments, impositions and outgoings whatsoever imposed on or payable in respect of the Property or on its owner or occupier;
- 4.2.2 all insurance premiums payable under the insurances effected by the Licensor in relation to the Property (including any additional premiums payable by reason of the Permitted Use);
- 4.2.3 [a proper proportion attributable to the Property (as certified by the Licensor or the Licensor's surveyor, whose certificate will be conclusive and binding on the Licensee except in the case of manifest error) of the following costs in relation to the premises of which the Property forms part:
- (a) all rates, taxes, duties, levies, charges, assessments, impositions and outgoings whatsoever imposed on or payable in respect of such premises or on the owner or the occupier; [and]
  - (b) all insurance premiums payable under the insurances effected by the Licensor in relation to such premises; [and]
  - (c) all expenditure incurred by the Licensor in relation to services provided to such premises, including maintenance, repair, renewal, cleaning, lighting, decorating, security, provision of plant and equipment, compliance with statute, employment of staff, provision of electricity, water and other utilities and general management.]
- 4.2.4 all costs incurred by the Licensor in procuring the remedy of any breach of any obligation of the Licensee under the Licence.

- 4.3 All sums payable under the Licence, [including the Licence Fee,] are exclusive of Value Added Tax, which, if payable, is payable in addition in return for a valid Value Added Tax invoice.

- 4.4 If:

- 4.4.1 [the Licence Fee is not paid on the due date; or]
- 4.4.2 any [other] sums due by the Licensee are not paid within [ten] Business Days after the due date

then the Licensee will pay to the Licensor Interest on the outstanding money.

## 5. **Use**

- 5.1 The Licensee will use the Property for the Permitted Use and for no other purpose.
- 5.2 The Licensor gives no warranty that:
  - 5.2.1 the Property is suitable for the Permitted Use; or
  - 5.2.2 the Permitted Use is or will remain the permitted use of the Property within the provisions of the planning or other relevant legislation from time to time.
- 5.3 The Licensee will not do or permit to be done upon or in connection with the Property anything which would be a legal nuisance or cause of damage to the Licensor or the other occupiers of any neighbouring premises or both.
- 5.4 The Licensee will comply with:
  - 5.4.1 all statutes, bye-laws and other regulations affecting the Property or the Licensee's use of the Property;
  - 5.4.2 all obligations, restrictions, reservations and other conditions in the titles of the Property; and
  - 5.4.3 all reasonable regulations which may be issued from time to time by the Licensor or its agents in relation to the Property, including in respect of health and safety, risk management and security.

## 6. **Indemnity and insurance**

- 6.1 The Licensee will indemnify and keep indemnified the Licensor on demand from all liability in respect of:
  - 6.1.1 any injury to or death of any person;
  - 6.1.2 damage or loss which may be suffered by any persons by reason of or arising out of the use of the Property by the Licensee;
  - 6.1.3 any breach by the Licensee of its obligations under the Licence; and
  - 6.1.4 local authority rates and other costs associated with the occupancy of the Property.
- 6.2 The Licensee will take out insurance cover:
  - 6.2.1 such as is necessary to give full indemnification to the Licensor in respect of the matters referred to at Clause 6.1; and
  - 6.2.2 against public liability in at least the sum of £[ ] for each and every claim

and, in both cases, will produce written evidence of such insurance to the Licensor on demand.

- 6.3 The Licensee will not do anything which vitiates or makes void or voidable any insurance policy for the Property effected by the Licensor, or causes monies otherwise payable under such policy to be irrecoverable or refused or withheld, or an increased premium or loading to be payable in respect of such policy.

- 6.4 Should the use or non-use of the Property cause any increase in the cost of insuring any adjacent premises of the Licensor the Licensee will on demand from time to time pay to the Licensor the amount of any such increase.

**7. Alienation**

- 7.1 The Licence is personal to the Licensee and the Licensee will not (either wholly or partially) assign, sub-let, part with or share occupation or otherwise deal in any way with its interest in the Licence.
- 7.2 The Licensor will be entitled to assign its interest under the Licence.

**8. Condition**

- 8.1 The Licensee accepts the Property in its present condition [as evidenced by the Schedule of Condition] as being fit in all respects for the Permitted Use.

- 8.2 The Licensee will:

8.2.1 at its own cost, repair and maintain the Property in [good repair and condition] [the condition as evidenced by the Schedule of Condition] so that it is at all times in at least such condition and, when necessary, but only in so far as required to maintain the Property in such condition, renew and rebuild the Property (other than damage caused by risks against which the Licensor has effected insurance except to the extent its insurance has been invalidated by the Licensee or those for whom they are responsible); and

8.2.2 leave the Property in such condition at the Date of Termination;

all to the satisfaction of the Licensor (acting reasonably).

- 8.3 If the Licensee fails to carry out any works to the Property for which it is responsible in terms of the Licence after a written demand has been made by the Licensor, the Licensor may carry out such works (without prejudice to its other rights including its rights to terminate the Licence) and the Licensee will pay to the Licensor on demand the whole proper costs incurred by the Licensor in so doing, together with Interest.

- 8.4 The Licensor will have no liability to repair, maintain, renew or replace the Property.

**9. Alterations**

- 9.1 The Licensee will not carry out any alterations or additions to the Property without the prior written approval of the Licensor [(which will not be unreasonably withheld or delayed in respect of internal non-structural alterations only)].

- 9.2 To the extent requested by the Licensor, the Licensee will remove any alterations and additions carried out by it and reinstate the Property at the Date of Termination to the condition they were in before such alterations and/or additions were made.

**10. Access**

When taking access to the Property, the Licensor will, and will procure that any other parties exercising such rights of access will:

- 10.1 cause minimum interference reasonably practicable with the Licensee's use of the Property and
- 10.2 make good to the Licensee's satisfaction (acting reasonably) any damage caused to the Property and the Licensee's fixtures and fittings.

## 11. **Registration**

The Licensor will:

- 11.1 register the Licence in the Books of Council and Session for registration for preservation and execution;
- 11.2 order [two] extracts; and
- 11.3 deliver one of the extracts to the Licensee (or its solicitors on its behalf) as soon as reasonably practicable following receipt of the extracts.

## 12. **Early termination**

If:

- 12.1 any sums due under the Licence [(including the Licence Fee)] or any part of them are not paid on the due dates, or
- 12.2 the Licensee fails to implement any of its other obligations under the Licence, or
- 12.3 the Licensee:
  - 12.3.1 goes into liquidation, receivership or administration;
  - 12.3.2 signs a trust deed for creditors, are sequestrated or enter into a voluntary arrangement;
  - 12.3.3 becomes insolvent or apparently insolvent; or
  - 12.3.4 is wound up or dissolved

then, in each case, the Licensor may, at its option, at any time by notice in writing to the Licensee terminate the Licence with effect from the date specified in the notice but reserving to the Licensor its right of action in respect of any antecedent breach of the Licensee's obligations.

## 13. **Notices**

- 13.1 Any notice, demand, request or certificate required under the Licence must be in writing and may be delivered personally [, or] sent by post [or transmitted by fax] to the relevant Party using the relevant details specified in Clause 13.3.]
- 13.2 Any notice, demand, request or certificate will be deemed to be received:
  - 13.2.1 if delivered personally, (with proof of delivery) at the time of delivery; [and]
  - 13.2.2 if sent by recorded delivery post, 48 hours after the date of posting; [and]
  - 13.2.3 in the case of fax, at the time when the sender's fax machine confirms transmission;]

Provided that if, in the case of personal delivery [or transmission by fax], such delivery [or transmission] occurs outwith normal business hours on a Business Day or on a day which is not a Business Day, delivery will be deemed to occur on the next Business Day.

- 13.3 [The details referred to in Clause 13.1 are:

[            ]

Address: [            ]

[Fax Number: [            ]]

For the attention of: [ ]

[ ]

Address: [ ]

[Fax Number: [ ]]

For the attention of: [ ];

or such other address[, fax number] or person as may be notified in writing from time to time by the relevant Party to the other Party for the purposes of this Clause.]

#### 14. **No Liability**

The Licensor is not liable to the Licensee for any loss, injury or damage which the Licensee may sustain from a deficiency in any part of the Property or the death of or injury to any person or for damage to any property or for any losses, claims, demands, actions, proceedings, damages, costs or expenses or other liability incurred by the Licensee in the exercise or purported exercise of the rights conferred on the Licensee under the Licence.

#### 15. **Formal Documentation**

15.1 Neither the Licensee nor the Licensor will be bound by any acceptance of this offer or any other letter purporting to form part of the Licence or any amendment or variation of the Licence unless it is duly executed.

15.2 The Licence represents the entire agreement between the Parties relating to the licence of the Property and supersedes any previous agreements between the Parties relating to it. Neither of the Parties has been induced to enter into the Licence on account of any prior warranties or representations made which are not embodied in the Licence and no representation, warranty or undertaking of any description in respect of the Property, whether in relation to title, state of repair, compliance with statutes or other matters, the existence of local authority or other proposals or orders, or otherwise, is given in the Licence except insofar (if at all) as expressly stated in the Licence.

#### 16. **Costs**

16.1 [Each of the Parties will bear their own costs and expenses] [The Licensee will pay within five Business Days after written demand the costs and expenses reasonably and properly incurred by the Licensor] in connection with the preparation and completion of the Licence.

16.2 The Licensee will pay within five Business Days after written demand the costs of registering the Licence in the Books of Council and Session and obtaining the extracts.

#### 17. **Proper Law and Prorogation**

The Licence and the rights and obligations of the Licensor and the Licensee are governed by and are to be construed in accordance with the law of Scotland and the Licensor and the Licensee are deemed to have agreed to submit to the non-exclusive jurisdiction of the Scottish courts.

#### 18. **Consent to Registration**

The Parties consent to registration of the Licence for preservation and execution.

19. **Time Limit**

This offer unless previously withdrawn is open for written acceptance reaching us here no later than [ ] on [ ] failing which it will be deemed to have been withdrawn.

Yours faithfully