SUBLEASE OF WHOLE

(for use in conjunction with the PSG Leases based on the Model Commercial Lease of Whole Building)

SUBLEASE

between

[ ]

and

[ ]

Property: [ ]

[DRAFTING NOTE: THIS SUBLEASE 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 SUBLEASE IS FIRST SUBMITTED TO THE SUB-TENANT'S SOLICITORS]

Version 1
January 2025

Table of Contents

1. Definitions 1
2. Interpretation 2
3. Demise and Term 2
4. Sub-tenant's monetary obligations 3
5. Sub-tenant's non-monetary obligations 3
6. Mid-landlord's obligations 4
7. Mid-landlord's remedies 5
8. Landlord’s rights 5
9. Suspension of Rent 5
10. VAT 5
11. Irritancy 6
12. Continuance of Sublease……6
13. Notices 6
14. [Break Clause] 6
15. Contract (Third Party Rights)(Scotland) Act 2017 7
16. Jurisdiction 7
17. Consent to Registration 7

SUBLEASE

between

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

The Mid-landlord and the Subtenant agree as follows:

1. **Definitions**

Words which are defined in clause 1 of the Lease[1] have the same meanings in this Sublease, unless other meanings are assigned to them below. In this Sublease:

["**Break Date**" means [*Insert date or dates*] [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 Subtenant's formal notice given under Clause 13.1 of this Sublease];

"**Lease**" means the lease of the Premises between [ ] and [ ] dated [ ] and registered in the Books of Council and Session on [ ] [and the tenant's right to which is registered in the Land Register of Scotland under Title Number [ ]] [as varied and amended by [ ]];

"**Lease Rent**" means the annual rent payable from time to time in terms of the Lease;

"**Premises**" means ALL and WHOLE the premises known as [*insert address of Premises*] being the property let under the Lease;

"**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 the Schedule][2];

"**Rent Commencement Date**" means [*insert date or description*];

"**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 each month][3];

["**Rent Review Date**" means each of the dates represented by the same expression in the Lease which falls within the Term;]

["**Revised Rent**" means the amount of the rent established at each Rent Review Date in accordance with the provisions contained in the Schedule;]

["**Schedule**" means the schedule annexed and executed as relative to this Sublease;]

"**Sublease**" means this sublease;

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

---

[1] All references to clauses / parts of the schedule in the Lease are to those contained in the PSG Lease (based on Model Commercial Lease Building (Office) (MCL-OFFICE-02)) template and should be checked with reference to the Lease in question.

[2] In Part 1 of the Schedule we have assumed a contemporaneous review of rent under both the Lease and the Sublease; and for any increase to be passed on to the Subtenant. This may not necessarily be appropriate e.g. the Sublease Rent could be made subject to a separate open market or indexed review protocol.

[3] To assist the Mid-landlord's cash flow and to avoid the issue of arrears the Mid-landlord may wish to stipulate earlier Rent Days than those which appear in the Lease.

"**Term End Date**" means [*insert date*][4] or such earlier date as the Lease ends; and

"**Term Start Date**" means [*insert date*].

2. **Interpretation**

2.1 The interpretation provisions of clause 2 of the Lease apply, where applicable, to this Sublease.

2.2 Where any matter is expressed to require the consent or approval of the Landlord under the Lease such matter will also require the consent or approval of the Mid-landlord, such consent or approval will not be unreasonably withheld or a decision unreasonably delayed and the consent or approval of the Landlord while a necessary condition for the matter in question, will not in itself be sufficient to imply the grant of consent or approval by the Mid-landlord.

2.3 In considering whether to signify its consent or approval in its deliberations in terms of clause 2.2, the Mid-landlord may have regard to both its right as tenant under the Lease and as landlord under this Sublease.

2.4 Where any matter is expressed to require the consent or approval of the Mid-landlord under this Sublease, such matter will also require the consent or approval of the Landlord to the extent required by the Lease.

2.5 Any entry on the Premises by the Mid-landlord or by any person authorised under this Sublease by the Mid-landlord to enter, will be subject to the terms of clause 5.4 of the Lease.

2.6 Any right of entry onto the Premises reserved to the Landlord or the Mid-landlord under this Sublease includes the right to bring contractors and appropriate equipment and machinery onto the Premises.

2.7 For the purposes of this Sublease only:

2.7.1 and where the context so permits, the references to the "Landlord" and "Tenant" in the Lease will be read as references to the Mid-landlord and Subtenant in this Sublease; and

2.7.2 if there is an inconsistency between any of the provisions of this Sublease and the provisions of the Lease, the provisions of this Sublease will prevail.

2.8 [The Schedule forms part of this Sublease.]

3. **Demise and Term**

3.1 In consideration of the Rent and the other provisions of this Sublease the Mid-landlord lets the Premises to the Subtenant:

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 14 of this Sublease];

3.1.2 together with the rights listed in part 1 of the schedule to the Lease;

3.1.3 excepting and reserving to the Mid-landlord and the Landlord the reserved rights listed in part 2 of the schedule to the Lease;[5]

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

---

[4] Consider whether this should correspond to the Term End Date under the Lease – an earlier date may be advisable to facilitate terminal dilapidations being undertaken especially if the Subtenant has qualified its contingent dilapidations/ repairs liability. If not co-terminus consider extent of Subtenant's dilapidations/ repairs liability with reference to paragraph 5 of the Guidance Notes.

[5] It may be appropriate to distinguish between the reserved rights exercisable by the Landlord under the Lease (especially if concerning common/structural parts) from those exercisable by the Mid-landlord (which are likely to be less extensive – e.g. tenant breach) – i.e. consider whether the Mid-landlord needs to exercise all the rights reserved to the Landlord.

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

3.2 The Subtenant accepts the Premises [and the Common Parts] 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 Mid-landlord for ordinary and/or extraordinary replacement, renewal or reinstatement of the Premises are excluded.

3.3 All of the provisions of the Lease which apply to the removal by the Mid-landlord from the Premises at the end of the term of the Lease will apply, *mutatis mutandis,* to the removal by the Subtenant from the Premises at the Term End Date.[6]

4. Subtenant's monetary obligations

4.1 Rent

4.1.1 The Subtenant must pay the Rent to the Mid-landlord 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]; and

4.1.2 The Rent and all other sums payable under this Sublease must be paid by the Subtenant by electronic transfer to a United Kingdom bank account notified by the Mid-landlord to the Subtenant from time to time.

4.2 Reimbursement

4.2.1 The Subtenant must reimburse the Mid-landlord on demand all payments made by way of reimbursement or otherwise by the Mid-landlord to the Landlord under the Lease (relating to the period after the Term Start Date) with the exception of:

(a) the Lease Rent; and

(b) interest on any expenses incurred by the Landlord in procuring payment of any sum of money payable or reimbursable to the Landlord under the Lease which have become due but remain unpaid by the Mid-landlord.

4.2.2 The Subtenant must pay on demand the Mid-landlord's costs properly and (other than in the case of Clause 4.2.2(a) of this Sublease) reasonably incurred (including legal and surveyor's charges and sheriff officer's fees) and disbursements in connection with:

(a) any breach of any of the Subtenant's obligations under this Sublease including the preparation and service of a formal notice under Clause 11 of this Sublease;

(b) the preparation and service of a schedule of dilapidations served under this Sublease no later than six months after the Term End Date; and

(c) any application by the Subtenant for consent under this Sublease whether that application is withdrawn or consent is granted or lawfully refused except in cases where the Mid-landlord is required to act reasonably and the Mid-landlord unreasonably refuses to give consent.

4.3 Outgoings

The Subtenant must pay when due (or reimburse the Mid-landlord on demand) any Outgoings which the Mid-landlord is responsible for paying under clause 4.2 of the Lease (relating to the period after the Term Start Date), other than taxes arising on the Rent or taxes arising on the

[6] The considerations at FN4 may equally be relevant.

disposal or deemed disposal by the Mid-landlord of, or other dealing by the Mid-landlord with, its right to the Premises.

4.4 Interest on payment in arrears

The Subtenant 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 Registration Costs

The Subtenant will pay within five Business Days after demand the costs of registering this Sublease in the Books of Council and Session and obtaining [an electronic extract] [3 extracts (one for each of the Landlord, the Mid-landlord and the Subtenant)].

5. **Subtenant's non-monetary obligations**

5.1 Fulfilment of Mid-landlord's obligations

The Subtenant must perform the Mid-landlord's non-monetary obligations under the Lease.

5.2 Entry to premises

In any case where the Landlord has reserved a right of entry to the Premises under the Lease, the Subtenant must permit such right to be exercised by the Landlord and/or the Mid-landlord subject to any condition in the Lease.

5.3 Application for consent or approval

The Subtenant must disclose to the Mid-landlord such information as the Mid-landlord may reasonably require on making an application for any consent or approval which is required under this Sublease.

5.4 Alienation

5.4.1 The Subtenant must not assign, sub-underlet or otherwise dispose of or deal with the Subtenant's right to, or part with or share possession or occupation of part only of, the Premises.

5.4.2 The Subtenant must not sub-underlet the Premises as a whole.

5.4.3 The Subtenant must not assign or otherwise dispose of or for any purpose or in any way deal with the Subtenant's right to the Premises or part with or share possession or occupation of the whole of the Premises without the consent of the Mid-landlord [(at its absolute discretion)].

5.5 [User

The Premises may be used only as [*here narrate any permitted use if it is more restrictive than the use provisions in the Lease*] and for no other purpose without the consent of the Mid-landlord [(at its absolute discretion)].]

6. **Mid-landlord's obligations**

6.1 Provided that the Subtenant indemnifies the Mid-landlord against any costs reasonably incurred by or awarded against the Mid-landlord the Mid-landlord will:

6.1.1 on the request of the Subtenant unless such request is demonstrably unreasonable having regard to the Mid-landlord's right to the Premises:

(a) adopt any procedure designed to enforce the fulfilment of the obligations undertaken by the Landlord under the Lease;

(b) request the Landlord to include any additional risk in the Insured Risks;

(c) request the Landlord to adopt a greater sum as the loss of rent for the Risk Period; [and]

(d) request the Landlord to adopt a greater amount in respect of the full reinstatement cost of the Premises; and

(e) [take reasonable steps to:

(i) procure the Subtenant's right to the Premises is noted (either specifically or generically) on the Landlord's policy of insurance; and

(ii) procure that the insurers waive any rights of subrogation they may have against the Subtenant (either specifically or generically); and]

6.1.2 [in relation to the Landlord's policies of insurance and subject to such information being provided to the Mid-landlord by the Landlord:

(a) notify the Subtenant promptly of all material variations; and

(b) provide the Subtenant with a summary of its main terms on the Subtenant's written request.]

6.2 The Mid-landlord must pay the Lease Rent and other payments due to the Landlord in terms of the Lease. [Provided that in relation to such other payments it will be at the Mid-landlord's option only to pay these as and when it has been put in funds to do so by the Subtenant].

6.3 The Mid-landlord must not vary the terms of the Lease without the consent of the Subtenant.[7]

6.4 The Mid-landlord must notify the Subtenant as soon as reasonably practicable after the Mid-landlord either serves, receives or becomes aware of any notice or claim affecting the Premises.

6.5 The Mid-landlord must refund any Rent and (to the extent refunded by the Landlord) Insurance Costs paid in advance by the Subtenant in relation to the period falling after the End Date within [10] Business Days after the Term End Date.

6.6 Clause 6.5 will not apply if the Mid-landlord ends this Sublease under Clause 11 of this Sublease or if this Sublease is disclaimed by the Crown or by a liquidator or trustee in bankruptcy of the Subtenant.

6.7 Subject to the other provisions of this Sublease the Mid-landlord grants warrandice.

7. **Mid-landlord's remedies**

The same rights and remedies as are available to the Landlord against the Tenant under the Lease will be available to the Mid-landlord against the Subtenant under this Sublease and will be subject to the same conditions.

8. **[Landlord's rights[8]**

The Subtenant accepts that the Landlord, if it chooses to do so, may enforce the provisions of this Sublease, including those provisions which require the consent or approval of the Landlord to be obtained in particular circumstances, against the Subtenant as if the Landlord was the

[7]While a sub-tenant with a real right cannot be impacted by any variation of the head-lease which they are not a party to, you may wish to go further and expressly prevent any variations without consent.

[8] Consider whether such a clause may be appropriate in the circumstances and if so consider excluding this Clause from the application of Clause 14 (Third Party Rights).

Mid-landlord, and this provision is inserted for the benefit of, and will be enforceable by, the Landlord.]

9. **Suspension of Rent**

9.1 Clause 9.2 will apply if the Premises are destroyed or damaged by any Insured Risk [or Uninsured Risk] so that the Premises are unfit for occupation or use or inaccessible. Clause 9.2 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 Subtenant does or fails to do and the Subtenant has not complied with paragraph 1.1.3 of part 5 of the schedule to the Lease.

9.2 Subject to Clause 9.1 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:

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

9.2.2 the end of the Risk Period; and

9.2.3 the Term End Date.

10. **VAT**

10.1 All sums payable by the Subtenant are exclusive of any VAT that may be chargeable. The Subtenant will pay VAT in respect of all taxable supplies made to it in connection with this Sublease on the due date for making any payment or, if earlier, the date on which that supply is made for VAT purposes.

10.2 Every obligation on the Subtenant under or in connection with this Sublease to pay, refund or indemnify the Mid-landlord, or any other person, in respect of any money or against any liability includes an obligation to pay, refund or indemnify that person against any VAT or an amount equal to any VAT, that may be chargeable in respect of that sum.

11. **Irritancy**

The Mid-landlord is entitled to terminate this Sublease and enter, repossess and enjoy the Premises in the same circumstances as those provided for in clause 6 of the Lease as if those circumstances were set out in full in this Sublease.

12. Continuance of Sublease

Except to the extent expressly provided in this Sublease, and notwithstanding any rule of law to the contrary, this Sublease will not end by reason of any damage to or destruction of the Premises but will remain in full force and effect EXCEPT that if the Lease is terminated by reason of such damage or destruction or if the Landlord or the Mid-landlord exercises a right to terminate the Lease on the grounds of failure to reinstate such damage or destruction within the period specified in the Lease, then this Sublease will terminate on the same date.

13. **Notices**

13.1 The provisions for notices contained in clause 6.5 of the Lease will apply also under this Sublease as if the "Mid-landlord" had been substituted for the "Landlord" and the "Subtenant" had been substituted for the "Tenant".

13.2 The following [are the addresses] [is the address] for service [in the United Kingdom] for:

13.2.1 [Insert name of Mid-landlord] – [insert address]; and

13.2.2 [Insert name of Subtenant] – [insert address].

14. **[Break Clause**

14.1 The Subtenant may terminate this Sublease on [any] [the] Break Date by giving the Mid-landlord formal notice of not less than [*Insert length*] months [specifying the Break Date][9] following which the Term will end on that Break Date[if:[10]

14.1.1 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]

14.1.2 on the Break Date the whole of the Premises are given back to the Mid-landlord free of the Subtenant's occupation and the occupation of any other occupier and without any continuing sub-underleases] [; and

14.1.3 on or before the Break Date the Subtenant has paid to the Mid-landlord an amount equal to [*Insert figure/proportion of the Rent*] (plus any VAT payable on that amount)]].

14.2 The Mid-landlord may waive any of the pre-conditions in [Clauses 14.1.1 to 14.1.3] at any time before the [relevant] Break Date by notifying the Subtenant. A waiver by the Mid-landlord of any of these pre-conditions will not affect the Subtenant's liability under this Sublease for the matters set out in these conditions. If the Mid-landlord waives the pre-condition in Clause 14.1.3 and this Sublease ends on the [relevant] Break Date, the Subtenant must pay to the Mid-landlord immediately after the [relevant] Break Date the sum specified in that Clause].

14.3 [The break right in this Clause 14 is personal to the Subtenant (here meaning [ ] Limited (Registered Number [ ])) and will end on the effective date of any permitted assignation of this Sublease or on the date when [ ] Limited ceases to exist.]

14.4 If this Sublease ends under this Clause 14, this will not affect the rights of any party for any prior breach of an obligation in this Sublease.

14.5 Time is of the essence for the purposes of this Clause 14.]

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

This Sublease[, other than Clause 8,][11] 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 Sublease.

16. **Jurisdiction**

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

16.2 Subject to Clause 16.3 and any provisions in this Sublease 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 Sublease, including in relation to any non-contractual obligations.

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

17. **Consent to Registration**

The parties consent to registration of this Sublease for preservation and execution: IN WITNESS WHEREOF this Sublease consisting of this and the preceding [ ] pages [together with the Schedule] are subscribed [in counterpart] as follows:

---

[9] This wording is not required if the Subtenant can end this Lease only on a single specified date.

[10] The conditions in this break clause are consistent with the RCIS Professional Standard "Code for Leasing Business Premises First Edition (February 2020)".

[11] Consider in conjunction with Clause 8 (Landlord's Rights).

[SCHEDULE

This is the Schedule referred to in the foregoing Sublease between [ ], and [ ].

Rent Review

1. **Revised Rent**

From and including every Rent Review Date the Rent will be the higher of:

1.1 the rent payable by the Mid-landlord for the Premises as from the Rent Review Date in question in terms of the Lease ("**Reviewed Lease Rent**"); and

1.2 the Rent payable by the Subtenant under this Sublease immediately prior to the Rent Review Date in question (disregarding any suspension or abatement of rent pursuant to Clause 9 of this Sublease).

2. **Conduct of rent review**

In relation to the procedure for establishing the Reviewed Lease Rent:

2.1 the Mid-landlord must not:

2.1.1 agree on the quantum of the Reviewed Lease Rent; or

2.1.2 agree the identity of the [expert][arbitrator] to be nominated for the purpose of determination of the Reviewed Lease Rent

without the approval of the Subtenant; and

2.2 if so requested by the Subtenant the Mid-landlord must request 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) to nominate an [expert][arbitrator] for the purpose of such determination.

3. **Rent review memorandum**

3.1 When the Reviewed Lease Rent has been ascertained a memorandum specifying the amount of the Revised Rent must be entered into. The Mid-Landlord and the Subtenant will each bear their own costs in relation to that memorandum.

3.2 The Subtenant must pay, on demand:

3.2.1 any land and buildings transaction tax (or any equivalent land transaction tax) payable as a result of the rent review; and

3.2.2 the registration dues in the Books of Council and Session of the memorandum and of obtaining [an electronic extract][three extracts (one being provided for each of the Landlord, Mid-landlord and Subtenant)] [and, if appropriate, the registration dues in the Land Register of Scotland].

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

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

4.1 the Rent payable under this Sublease immediately before the Rent Review Date will continue to be payable until the Reviewed Lease Rent has been ascertained;

4.2 following the ascertainment of the Reviewed Lease Rent, the Mid-landlord will demand the difference (if any) between the amount the Subtenant has actually paid and the amount that would have been payable had the Reviewed Lease Rent been ascertained before the Rent Review Date; and

4.3 the Subtenant must pay that difference to the Mid-landlord within 10 Business Days after that demand and interest at [ ] per cent below the Interest Rate calculated on a daily basis on each instalment of that difference from the date on which each instalment would have become payable to the date of payment. If not paid those sums will be treated as rent in arrears.]