LEASE

(based on the Model Commercial Lease of Building on an Estate with Turnover Rent (Retail) (MCL-RETAIL-04) Version 1.5)

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 5
April 2023

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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:

"**Accounting Period**" means the annual period ending on [*Insert date*] in each year or any other date as the Landlord may decide and notify to the Tenant;

"**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 Estate and/or the Premises;]

"**Additional Services**" means the services listed in paragraph 4 of Part 4 of the Schedule;

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

"**Base Rent**" means the amount that is payable under Part 10 of the Schedule;

["**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;

"**Car Park**" means any car park or car parks forming part of the Estate at any time during the Term;

"**Common Parts**" means any part of, or anything in, the Estate ([including] [excluding][3] the Car Park) that does not form part of a Lettable Unit and that is used or available for use by:

(a) the tenants of the Estate;

(b) the Landlord in connection with the provision of the Services; or

(c) customers of or visitors to the Estate;

"**company**" includes:

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

(b) to the extent applicable, any overseas company as defined in section 1044 of the Companies Act 2006; and

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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.

3 Consider the impact of including or excluding any car park on the rights granted to the Tenant.

(c) 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;]

"**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) the consumption of energy and associated generation of greenhouse gas emissions;

(b) the consumption of water;

(c) waste generation and management; and

(d) any other environmental impact arising from the use or operation of the Premises or the Estate;

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

"**Estate**" means ALL and WHOLE the land with the buildings known as [*Insert Estate description*] and shown [edged] [coloured] [*Insert colour*] on [the Plans] [Plan [*Insert number*]], being the property registered in the Land Register of Scotland under Title Number [ ], including:

(a) all alterations, additions and improvements and all landlord's fixtures forming part of it at any time during the Term;

(b) any adjoining land and buildings that the Landlord adds to it[4]; and

excluding any land or buildings that the Landlord removes from it;[5]

["**Estate Contribution**" means the aggregate in each Accounting Period of:[6]

(a) [50]% of the costs of promoting and advertising the Estate and staging activities and exhibitions within the Estate as detailed in paragraph 4.8 of Part 4 of the Schedule; [and]

(b) [a fair proportion of any after-tax income received by the Landlord in respect of the use of the Car Park, subject to that proportion not exceeding the aggregate of any Service Costs attributable to that Car Park; and][7]

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4 If there is any change in the extent of the Estate, the Landlord may have to recalculate the service charge proportions under paragraph 1.7 of Part 4 of the Schedule.

5 If the Tenant will be responsible for the repair and maintenance of glass within the Premises, including windows, consider whether the glass forming part of the Premises should be excluded from the definition of the Estate so that it does not fall within the Landlord's insurance and reinstatement obligations.

6 Check that the costs listed in the definition of Estate Contribution are identical across each lease in the Estate. If a concession is made to a particular tenant:

(a) a separate service charge reconciliation will be required for that tenant; and

(b) the Landlord will not be able to recover any shortfall from the other tenants in the Estate.

7 Consider whether any car park should be treated separately to remainder of the Estate for the Service Costs and the Estate Contribution. See also footnote to paragraph 5.9 of Part 4 of the Schedule.

(c) a fair proportion of any after-tax income received by the Landlord in respect of the use of the Common Parts [(other than the Car Park)], subject to that proportion not exceeding the aggregate of any Service Costs attributable to the generation of that income;][8]

"**Estate Opening Hours**" means [*Insert time*] to [*Insert time*] on Mondays to Saturdays inclusive and [*Insert time*] to [*Insert time*] on Sundays (except, in either case, Easter Day and Christmas Day) and any other longer or shorter periods on any days stipulated by the Landlord;

"**Estate Services**" means the services listed in paragraph 3 of Part 4 of the Schedule;

["**External Works**" means the works permitted under Clause[s] 4.11.5[and 4.11.9];]

["**Gross Internal Area**" means the gross internal area (or, when implemented, the equivalent International Property Measurement Standard) measured in accordance with the edition of the Professional Statement for Property Measurement issued by the Royal Institution of Chartered Surveyors current at the date of [this Lease] [measurement];] [9]

"**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);

"**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 1.1 of Part 5 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;[10]

"**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;

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8 Consider whether this definition (and concept of netting off against Service Costs) is required for the Estate.

9 This definition is required only where service charge weighting applies or sub-lettings of permitted parts will be by reference to the gross internal area to be sub-let. Consider whether the measuring code to be used should be that current at the date of this Lease or the most recent version at the date that the measurement is made. Also consider whether an alternative measuring code is to be used as some landlords may still want to use the RICS Code of Measuring Practice (Sixth Edition) 2007 to maintain consistency with other lettings at the Estate. See also the definitions of "Service Charge", "Tenant's Proportion" and "Weighted Area" and paragraph 1.7 of Part 4 of the Schedule and paragraph 6 of Part 4 of the Schedule.

10 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.

"**Lettable Unit**" means accommodation within the Estate from time to time let or occupied or intended for letting or occupation, but excluding accommodation let or occupied for the purposes of providing any of the Services;

"**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 and any Plant; and

(c) 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 other parts of the Estate to the extent that those amounts do not form part of the Service Costs;

"**Permitted Use**" means:

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

(b) any other [non-food] [retail] use complying with the Landlord's retail and tenant mix policy and 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][11] as the Landlord may approve;

"**Permitted Works**" means any works or installations [(including any External Works)] to which the Landlord has consented or for which, under Clause 4.11, the Landlord's consent is not required[together with any Prior Lease Alterations][12];

"**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[13] forming Part 11 of the Schedule;

["**Plant**" means [Electronic Communications Apparatus,] [wireless network equipment,] [television aerials and satellite dishes] [and] [air-conditioning plant] [not exceeding two metres in height] installed by the Tenant or any sub-tenant under the rights in paragraph 5 of Part 1 of the Schedule;][14]

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

12 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 or those works are to be disregarded on any rent review under this Lease.

13 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.

14 This definition is required only where the roof space is excluded from the Premises but the Tenant will be granted rights to use that roof space to install Plant or the Tenant will be granted a right to install Plant in a Plant Area outside the Premises.

["**Plant Area**" means the area for Plant [[within the area][15] shown [edged] [coloured] [*Insert colour*] on [the Plans] [Plan [*Insert number*]]] [[on the roof of the Premises] allocated to the Tenant by the Landlord] or any alternative area as notified under Clause 5.9.3;][16]

"**Premises**" means ALL and WHOLE the premises known as [*Insert address of Premises*] forming part of the Estate and shown [edged] [coloured] [*Insert colour*] on [the Plans] [Plan [*Insert 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 Lettable Units;

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

(d) all tenant's fixtures; and

(e) any Permitted Works [(other than any External Works)] carried out to or at the Premises;

but excluding the airspace above the height of the topmost point of the building (or the tallest building if there is more than one) on the Premises;

["**Prior Lease**" means a lease of the [Premises][17] 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;][18]

["**Prior Lease Alterations**" means all works carried out to or for the benefit of the [Premises][19] 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];] [20]

["**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 3.3 of Part 5 of the Schedule;

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15 Include these words where the Landlord allocates a plant area that will be used by several tenants to install their plant.

16 This definition is required only where the roof space is excluded from the Premises but the Tenant will be granted rights to use that roof space to install Plant or the Tenant will be granted a right to install Plant in a Plant Area outside the Premises.

17 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.

18 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,

19 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.

20 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.

"**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][21];

["**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];] [22]

"**Risk Period**" means the period for which the Landlord decides to insure against loss of Rent[and Service Charge], being a minimum of [three] years and a maximum of [five][23] years, starting on the date of the relevant damage or destruction;

"**Schedule**" means the Schedule of [11] 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][24];][25]

"**Service Charge**" means [a fair proportion (calculated on a floor area basis or any other method as the Landlord decides from time to time)] [the Tenant's Proportion][26] of the Service Costs subject to any adjustments made by the Landlord under the provisions of paragraph 1.6 of Part 4 of the Schedule;

"**Service Charge Code**" means the Royal Institution of Chartered Surveyors professional statement "Service charges in commercial property" (1st edition, September 2018);

"**Service Costs**" means the aggregate costs [(less any Estate Contribution)] incurred by the Landlord in providing the Services in each Accounting Period, together with:

(a) VAT that is not recoverable by the Landlord from HM Revenue & Customs; and

(b) the sums chargeable under paragraph 1.2.4 of Part 4 of the Schedule;

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

"**Services**" means the Estate Services and the Additional Services;

["**Servicing Hours**" means [*Insert time*] to [*Insert time*] on Mondays to Saturdays inclusive and [*Insert time*] to [*Insert time*] on Sundays (except, in either case, Easter Day[,] [and] Christmas Day[and Boxing Day]) and any longer or shorter periods on any days stipulated by the Landlord;] [27]

"**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;

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

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

23 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.

24 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.

25 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.

26 Include this definition only where floor weighting applies to the service charge calculations. See also the definitions of "Gross Internal Area", "Tenant's Proportion" and "Weighted Area" and paragraph 1.7 of Part 4 of the Schedule and paragraph 6 of Part 4 of the Schedule.

27 If 24 hour servicing is available, this definition is not required.

["**Tenant's Proportion**" means the proportion that the Weighted Area of the Premises bears to the aggregate of the Weighted Areas of all Lettable Units (each discounted in accordance with paragraph 6 of Part 4 of the Schedule) at the beginning of the relevant Accounting Period;][28]

"**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*];

"**Turnover Rent**" means the amount that is calculated in accordance with and payable under Part 9 of the Schedule;

"**Uninsured Risk**"[29] means any risk expressly specified in the Insured Risks definition that:

(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; [and]

["**Weighted Area**" means the Gross Internal Area of the relevant property discounted in accordance with paragraph 6.1 of Part 4 of the Schedule;][30]

"**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[; and

"**Wireless Policy**" means any rules of interaction produced by the Landlord that are designed to minimise interference between the Tenant's Wireless Data Services and the Landlord's Wireless Data Services and those of any other tenants or occupiers of the Estate].

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:

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28 Include this definition only where floor weighting applies to the service charge calculations. See also the definitions of "Gross Internal Area", "Service Charge" and "Weighted Area" and paragraph 1.7 of Part 4 of the Schedule and paragraph 6 of Part 4 of the Schedule.

29 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.

30 Include this definition only where floor weighting applies to the service charge calculations. See also the definitions of "Gross Internal Area", "Service Charge" and "Tenant's Proportion" and paragraph 1.7 of Part 4 of the Schedule and paragraph 6 of Part 4 of the Schedule.

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 Estate", "the Common Parts" or "the Premises" means the whole or an individual part or parts unless inappropriate in the context used;

2.4.2 "adjoining premises" means any land or buildings adjoining or nearby the Estate, 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;[31]

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

2.4.5 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;

2.4.6 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 4.15.4, which will be subject to the additional provisions set out in it;

2.4.7 any sums being payable on demand or when demanded mean being payable when demanded in writing;[32] and

2.4.8 the provision of plans, drawings, specifications or other documents means 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.[33]

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 them in their order, but not so as to impose any continuing

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31 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.

32 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 4.5.

33 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 2.7.7 of Part 6 of the Schedule.

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 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 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] [sub-letting] [or charge] of this Lease, that consent may only be given by the completion of a deed that contains the terms of the consent agreed between the parties, unless the Landlord elects in writing to waive this requirement.

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.[34]

2.12 Apart from in Clause 4.10.3, 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 4.10 and Part 2 of the Schedule may also be exercised by those authorised by the Landlord.[35]

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.

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;

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

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 Except when Clause 3.8 applies, 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 and Service Charge.

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

3.6 The Tenant must pay VAT under Clause 4.4.

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 Until the arrangements in Part 9 of the Schedule come to an end in accordance with paragraph 12 of Part 9 of the Schedule, instead of paying the Rent under Clause 3.3 the Tenant

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[34] In practice, the only provisions in this Lease that allow the Tenant to impose requirements are in Clause 5.5.

[35] Safeguards relating to the exercise of rights are contained in Clause 5.5 and, in relation to scaffolding, in Clause 5.6.

must pay the Base Rent and the Turnover Rent under Part 9 of the Schedule. This will not affect the operation of the rent review mechanism in Part 3 of the Schedule.

3.9 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.

3.10 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.[36]

4. Tenant's Obligations

4.1 Rent

The Tenant must pay the Rent or, where Part 9 of the Schedule applies, the Base Rent and the Turnover 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.][37]

4.3 Service Charge

The Tenant must pay the Service Charge in accordance with Part 4 of the Schedule.

4.4 VAT

4.4.1 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 they are 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.

4.4.2 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 Estate.

4.5 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.

4.6 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:

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[36] 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.

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

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

4.6.2 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

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

4.7 **Third party indemnity**[38]

4.7.1 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 in respect of any personal injury or death, damage to any property and any infringement of any right, 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

(c) the carrying out of any Permitted Works.

4.7.2 In respect of any claim covered by the indemnity in Clause 4.7.1, 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.

4.8 **Insurance**

The Tenant must comply with its obligations in Part 5 of the Schedule.

4.9 **Repair and decoration**

4.9.1 The Tenant 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 Landlord for ordinary and/or extraordinary repair, replacement, renewal or reinstatement of the Premises are excluded.

4.9.2 The Tenant must:

(a) keep the Premises [and any External Works] in good and substantial repair and condition and clean and tidy and as necessary renew, replace and rebuild the Premises [and any External Works] [but, in respect of those parts of the Premises [shown] [described] in the Schedule of Condition, the Tenant's obligations under this clause will be restricted to keeping those parts clean and tidy and in no worse state of repair and condition than the

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[38] 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.

state of repair and condition of those parts as evidenced by the Schedule of Condition];

(b) keep all Conducting Media, plant, equipment or fixtures forming part of the Premises [(or that exclusively serve them)][39] [and any External Works] properly maintained and in good working order in accordance with good industry practice and any requirements of the Landlord's insurers; 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)][40] [and any External Works] with items of equivalent or better quality.

4.9.3 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.

4.9.4 [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.]

4.9.5 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.[41]

4.9.6 The obligations under this Clause 4.9 apply:

(a) to both ordinary and extraordinary repairs;

(b) regardless of the age or state of dilapidation of the Premises[and any External Works]; and

(c) regardless of the cause of damage, deterioration or destruction even if the cause is a latent or inherent defect.[42]

4.9.7 The obligations under this Clause 4.9 (apart from Clause 4.9.3) exclude:

(a) damage by any Insured Risk, except to the extent that 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 1.1.3 of Part 5 of the Schedule; and

(b) damage by any Uninsured Risk.

4.10 **Allow entry**

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

4.10.2 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

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39 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.

40 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.

41 For a retail estate unit consider whether external redecoration is the appropriate term or whether the Tenant should be under an obligation properly to clean and properly treat the external surfaces of the Premises.

42 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.

within one month after being notified of them and diligently complete any works required.

4.10.3 If the Tenant does not comply with Clause 4.10.2, 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.

4.11 **Alterations**

4.11.1 The Tenant has no rights to carry out any alterations, works or installations to the Premises or outside the Premises unless it is expressly permitted to do so under this Clause 4.11.

4.11.2 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.

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

4.11.4 [The Tenant may, with the Landlord's consent, create openings in the walls[, ceiling or floor slabs] of the Premises that do not form a party wall with another Lettable Unit and in the structural walls within the Premises for the passage of the Conducting Media that exclusively serve the Premises.][43]

4.11.5 [The Tenant may, with the Landlord's consent, carry out works outside the Premises:

(a) to install or erect Plant on the Plant Area [in a location and] of a size and design approved by the Landlord; and

(b) to install new Conducting Media within the Estate along routes approved by the Landlord to connect the Premises to any Plant installed or erected by the Tenant under Clause 4.11.5(a).]

4.11.6 The Tenant may install, alter and remove tenant's fixtures[44] 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.

4.11.7 The Tenant must comply with its obligations in Part 6 of the Schedule when carrying out or installing any Permitted Works, whether or not the Landlord's consent is required for them.[45]

4.11.8 Where the Landlord's consent is expressly required under this Clause 4.11, the Landlord may impose requirements on the Tenant in addition to those contained in Part 6 of the Schedule when giving its consent.

4.11.9 [If the Landlord, in its absolute discretion, permits alterations, works or installations outside the Premises that are not permitted by this Lease, those alterations, works or installations will then be treated as External Works.]

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43 On a letting of part consider whether it is appropriate to give the Tenant the right to make openings in the walls or the floor or ceiling slabs. One option may be to permit the Tenant to create openings only in internal structural walls. Opening in internal non-structural walls are permitted under the following provisions in this Clause 4.11.4.

44 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 removed only with consent – for example industrial equipment.

45 Part 6 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 6 of the Schedule does not contain all the obligations the Landlord requires because of the specific nature of the intended works, Clause 4.11.8 allows the Landlord to impose additional obligations. That may still be done by simple letter – see paragraph 2.6 of Part 6 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.

4.12 **Signs and advertisements**

4.12.1 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.

4.12.2 Where the Premises have a glazed shop front, 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.

4.12.3 The Tenant must keep the Premises adequately lit during the Estate Opening Hours.

4.13 **Obligations at the End Date**

4.13.1 By the End Date the Tenant must have removed:

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

(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 or elsewhere on the Estate;

(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.

4.13.2 The Tenant must make good all damage to the Premises or the Estate caused when complying with Clause 4.13.1 and restore them to the same configuration state and condition as they were in before the items removed were originally installed.

4.13.3 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;[46]

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

(c) hand to the Landlord any registers or records maintained by the Tenant pursuant to any statutory duty that relate to the Premises in compliance with Clause 4.19 including any health and safety file, EPC and asbestos risk assessment and management plan.

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

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[46] 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.

(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.

4.14 **User**[47]

4.14.1 The Tenant must not use the Premises other than for the Permitted Use.[48]

4.14.2 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;[49] or

(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.

4.14.3 The Tenant must not:[50]

(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 the other tenants or occupiers of the Estate 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) 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;

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

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

48 Note there is no keep open clause.

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

50 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 lease of logistics premises for sample wording.

(g) compromise the passive or active fire protection measures within the Premises.[51]

4.14.4 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.

4.14.5 [The Tenant must comply with any Wireless Policy.][52]

4.14.6 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].

4.14.7 When exercising any right granted to it for entry to any other part of the Estate the Tenant must:

(a) cause as little damage and interference as is reasonably practicable to the remainder of the Estate and the business of its tenants and occupiers and make good any physical damage caused; and

(b) comply with the Landlord's requirements and those of any other tenants and occupiers of the Estate who are affected.

4.14.8 On each day that the Premises are open for trade, the Tenant must arrange collection of any of the Tenant's customer trolleys that have been left on other parts of the Estate.[53]

4.14.9 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.

4.14.10 [The Tenant must not use any parking spaces [in respect of which the Tenant is granted rights under paragraph 8 of Part 1 of the Schedule] [[or] 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.]

4.15 **Dealings with the Premises**

4.15.1 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 4.15 [or Part 8 of the Schedule].

4.15.2 [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.]

4.15.3 The Tenant must not assign the Tenant's right to the whole[or sublet the Tenant's right to the whole [or a Permitted Part]][54] of the Premises unless it has complied its

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51 This would include for example not cutting holes in the fire separating walls, fire stopping cavity barriers etc.

52 Consider whether the Tenant should comply with any Wireless Policy and whether you need to include more specific controls on the siting of wireless access points and the wireless channels that each tenant can use.

53 Landlord's requirements in relation to trolley collection will vary from estate to estate.

54 Consider whether the offer back provisions will be triggered by sub-lettings of whole or, where sub-lettings of part are permitted under this Lease, on sub-lettings of part. Requiring the Tenant to offer back the Premises on a sub-letting of a

obligations in Part 10 of the Schedule and the Landlord has decided (or it is treated that the Landlord has decided) not to accept an offer to renounce this Lease to the Landlord.

4.15.4 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),[55] 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.

4.15.5 [The provisions of Part 8 of the Schedule apply to sub-lettings of the Premises and the Tenant must comply with its obligations in that Part of the Schedule.]

4.15.6 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 4.16 of any charge created.

4.15.7 In addition to the provisions of this Clause 4.15, 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 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][56].

4.16 **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.[57]

4.17 **Marketing**

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

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permitted part is less common and would not usually be included unless required by the heads of terms agreed between the Landlord and Tenant.

55 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.

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

57 The lack of a registration fee is deliberate.

(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).

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

4.18 **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.[58]

4.19 **Comply with Acts**

4.19.1 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.

4.19.2 The Tenant must not do or fail to do anything in respect of the Premises or the Estate or their use and occupation the effect of which could make the Landlord liable to pay any penalty, damages, compensation, costs or charges under any Act.

4.19.3 [Without prejudice to the generality of the provisions of this Clause 4.19, 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][59][by the earlier of (i) the date by which completion of the Recommended Improvement Measures is required in terms of the AEP Regulations and (ii) the End Date][60].][61]

4.19.4 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.

4.20 **Planning Acts**

4.20.1 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.

4.20.2 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.

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

4.21 **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:

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

[59] 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.

[60] Use where it has been agreed that works will 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.

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

4.21.1 the Tenant must notify the Landlord; and

4.21.2 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.

4.22 **Management of the Estate**

4.22.1 The Tenant must not load or unload vehicles except on the parts of the Estate that it is permitted to use for that purpose by paragraph 2 of Part 1 of the Schedule.

4.22.2 The Tenant must not park vehicles in the Common Parts[except in any areas that it is permitted to use for that purpose by paragraph 8 of Part 1 of the Schedule].

4.22.3 The Tenant must not obstruct the Common Parts in any way or leave any goods on them.

4.22.4 The Tenant must not deposit rubbish anywhere on the Estate except in skips or bins provided for that purpose and, if the Tenant brings a skip onto the Premises, it must arrange for it to be removed or emptied regularly.

4.22.5 The Tenant must not use the Common Parts other than for the purposes designated under Clause 5.9.

4.22.6 [The Tenant must not use the Common Parts used for servicing the Premises outside the Servicing Hours.]

4.22.7 The Tenant must comply with all regulations notified to it or contained within any relevant tenant guide or handbook for the Estate published by the Landlord from time to time. No regulations may impose obligations on the Tenant that are inconsistent with the Tenant's rights and obligations under this Lease.

4.23 **Title Conditions**

The Tenant must:

4.23.1 comply with any title conditions (which includes servitudes) relating to the Estate[or any larger development of which the Estate forms part];

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

4.23.3 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.

4.24 **[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 Estate) 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).][62]

4.25 **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.

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[62] This clause should be included only if it is a specific requirement of the Landlord to monitor turnover in respect of the Premises. Clause 5.7 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.

4.26 **Data Sharing**

The Tenant must, if required by the Landlord, provide the Landlord on a [quarterly/annual] basis, all data relative to the Environmental Performance of the Premises that the Tenant holds, such data to be delivered:

4.26.1 in a form which provides meaningful and useful information; and

4.26.2 using an industry accepted methodology, agreed by the Landlord and the Tenant (each being bound to act reasonably), to ensure consistency of the data.

The Landlord undertakes to keep any such disclosed data confidential and only to use it to comply with any Legal Requirement.

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 5 of the Schedule.

5.3 **Services**

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

5.4 **Repayment of rent**

5.4.1 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.[63]

5.4.2 Clause 5.4.1 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.[64]

5.5 **Entry Safeguards**

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

5.5.1 give the Tenant at least [three] Business Days' prior notice (except in the case of emergency, when the Landlord must give as much notice as may be reasonably practicable);

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

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

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

5.5.5 cause as little physical damage as reasonably practicable;

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

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[63] Note that Service Charge repayments will be dealt with at the end of the relevant Accounting Period in accordance with the provisions in Part 4 of the Schedule.

[64] 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.

5.5.7 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;

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

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

5.6 **Scaffolding**[65]

5.6.1 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 entrances to the Premises and the Estate; and

(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.

5.6.2 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.

5.7 **[Turnover Information**

5.7.1 The Landlord will only use any information provided to the Landlord under Clause 4.24 for management purposes in connection with the monitoring and assessment of sales at and the performance of the Estate. The Landlord may disclose it to the following people on the terms of Clause 5.7.2:

(a) the Landlord's advisors and funders;

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

(c) where required by law; and

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

5.7.2 Where the Landlord is allowed to disclose the information to someone else under this Clause 5.7, the Landlord will stress its confidential nature.]

5.8 **Change in the extent of the Estate**

The Landlord may change the extent of the Estate but any changes must not:

5.8.1 materially increase the amount of Service Charge payable by the Tenant; or

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

5.8.2 materially prejudice:

(a) the Tenant's use and occupation of the Premises; or

(b) the rights, facilities and amenities granted to the Tenant under this Lease.

5.9 **Designation of the Common Parts and use of rights**

5.9.1 The Common Parts designated by the Landlord for the Tenant's use under Part 1 of the Schedule must include those Common Parts that are reasonably and properly required for the use and enjoyment of the Premises for their intended use.

5.9.2 If the Landlord does not designate specific Common Parts for the Tenant's use, the Tenant will be entitled to use all Common Parts required for the reasonable and proper enjoyment of the Premises for their intended use but the Tenant will not have the right to use any Common Parts used solely by the Landlord for the provision of the Services.

5.9.3 [The Landlord may, by giving formal notice to the Tenant, vary the extent or location of the Plant Area taking into account its own requirements and the requirements of other tenants and occupiers of the Estate. Where reasonably possible, areas will be separate for each tenant and the Landlord will take into account the location of the tenants' facilities requiring connection to the Plant Area. Clause 5.9 will apply if any relocation of the External Works is required following a variation in the location of the Plant Area.][66]

5.10 **[Relocation of External Works**

5.10.1 The Landlord may require the Tenant to relocate any External Works on not less than one month's formal notice to the Tenant.

5.10.2 The Landlord may not require the permanent relocation of the External Works if that relocation would have a material adverse impact on the Tenant's business at the Premises.

5.10.3 If the Landlord requires temporary relocation of the External Works, the Landlord must keep the period of relocation as short as reasonably practicable in the circumstances.

5.10.4 The Tenant must comply with the Landlord's requirements to relocate the External Works.

5.10.5 The Landlord will pay the Tenant's costs and expenses in complying with the Landlord's requirements to relocate the External Works unless their relocation is required only temporarily to enable the Landlord to carry out any of the Services, in which case the costs will be included in the Service Costs.][67]

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:

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66 Include this wording only where the Tenant has the right to install Plant in any Plant Area.

67 This clause is required only where the roof space is excluded from the Premises but the Tenant will be granted rights to use that roof space to install Plant or the Tenant will be granted a right to install Plant in a Plant Area outside the Premises

(i) requiring payment of the outstanding sum within the period of 14 days immediately following the date of service of the formal notice;[68] 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 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[69]:

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

[69] 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

(a) if the Tenant is a company or limited liability partnership:

(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[70] is presented against the Tenant that is not dismissed or withdrawn within ten Business Days of being presented[71]

(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; or

(v) it enters into a compromise or arrangement under Part 26 or Part 26A of the Companies Act 2006 or Part 1 of the Insolvency Act 1986; or

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

(b) if the Tenant:

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

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

(iii) is 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) signs a trust deed for creditors;

(c) any event similar to any listed in Clauses 6.1.4(a) or (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;

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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.

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

71 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.

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 or the Estate but will remain in full force and effect.[72]

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 the Estate or any adjoining premises.

6.3.2 The Tenant has no rights that would restrict building or carrying out of works to the Estate or 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 or the Estate.

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 the Estate or any adjoining premises is or 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 the Estate or 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

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[72] 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.

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

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.[73]

6.5.2 A formal notice served on:

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

(b) a person resident in or incorporated 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 deed or document to which they are a party or if no such address has been given at their last known address in the United Kingdom[. The following [are the addresses] [is the address] for service in the United Kingdom[74] 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.

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.

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[73] 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.

[74] 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.

6.7 **Energy Performance**[75]

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 or the Estate 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 necessary to inspect the Premises for the purposes of preparing any EPC or Action Plan.

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 or the Estate.

6.8 **[Sustainability**

The Landlord and Tenant must comply with the provisions of Part 7 of the Schedule.][76]

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][77] following which the Term will end on that Break Date[if:][78]

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 whole of the Premises are given back to the Landlord[free of the Tenant's occupation and the occupation of any other occupier and without any continuing sub-leases][79][; and

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75 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. The drafting throughout this Lease envisages the Landlord carrying out any necessary works but recovering associated costs via the Service Charge from the Tenant.

76 See FN78 above. As a consequence of the Assessment of Energy Performance of Non-Domestic Buildings (Scotland) Regulations 2016, the importance and necessity to include Part 8 of the Schedule ("Sustainability") has increased.

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

78 The conditions in this break clause are consistent with the Code for Leasing Business Premises (2021).

79 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 this 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

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.

7.3 [If the Tenant gives formal notice to the Landlord under Clause 7.1, the Tenant must on or before the Break Date make the payment to the Landlord as detailed in Clause 7.1.3.]

7.4 [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.]

7.5 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.[80]

7.6 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 of [11] Parts and the Plans annexed and subscribed as relative to this Lease are subscribed as follows:

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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.

80 The obligation to repay any rent relating to the period after the Break Date is in Clause 5.4.

Schedule

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

Part 1
Tenant's Rights[81]

[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, any person authorised by the Landlord and all other tenants and occupiers of the Estate but subject to the Landlord's rights:

1. **Running of services**

To connect to and use the existing Conducting Media at the Estate intended to serve the Premises for the passage of Supplies from and to the Premises.

2. **Access and servicing**

1.1 To have access to and from the Premises on foot only over the Common Parts designated by the Landlord for the Tenant's use.

1.2 [During the Servicing Hours] [At all times] (and subject to Clause 4.22) to use each of the following within the Common Parts designated by the Landlord for the Tenant's use:

1.2.1 any service area for loading and unloading and otherwise servicing the Premises; and

1.2.2 the service roads with or without vehicles to come and go to and from the Premises and any service area that the Tenant has the right to use under paragraph 2.2.1 of this Part of the Schedule.

1.3 To have access on foot and, where appropriate, with vehicles over any other Building Common Parts designated by the Landlord for the Tenant's use in order to exercise the rights set out in this Part of the Schedule.

3. **[Refuse disposal**

To deposit rubbish in any receptacles or waste compactors within the Common Parts provided by the Landlord for that purpose and designated by the Landlord for the use of the Tenant.

OR

To place and keep a skip or other refuse container or bulk refuse compactor on the Common Parts in a location reasonably designated by the Landlord.]

4. **Entry onto the Common Parts**

If the relevant work cannot otherwise be reasonably carried out, to enter the Common Parts to comply with the Tenant's obligations in this Lease. When exercising this right, the Tenant must:

1.4 give the Landlord at least [three] Business Days' prior notice (except in the case of emergency, when the Tenant must give as much notice as may be reasonably practicable);

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

1.6 cause as little interference to the operation and use of the Estate as reasonably practicable;

1.7 cause as little physical damage as is reasonably practicable;

1.8 repair any physical damage that the Tenant causes as soon as reasonably practicable;

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[81] Appropriate rights will be property specific in each case.

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

1.10 remain on the Common Parts for no longer than is reasonably necessary; and

1.11 where practicable, exercise this right outside the normal business hours of the Estate.

5. **[Plant Area**

Subject to the Tenant complying with Clauses 4.11 and 5.9 to install Plant on the Plant Area with connections to the Premises, each approved by the Landlord in accordance with Clause 4.11.5.][82]

6. **Directory board**

To exhibit the Tenant's name in such form, shape and size as the Landlord [approves] [specifies as the standard size and form of such signs] on any appropriate Estate directory board[at the entrance to the Estate].

7. **Support and shelter**

Support and shelter for the Premises from the Estate.

8. **[Staff parking**[83]

Option 1: Non-designated spaces for parking

To use, on a first come first served basis, [those areas of the car parks designated by the Landlord] [those areas shown coloured [*Insert colour*] on [the Plans] [Plan [*Insert number*]]] (or any other area within or adjoining the Estate notified by the Landlord to the Tenant at any time) for the parking of vehicles belonging to persons working at or authorised visitors to the Premises.

OR

Option 2: Designated spaces for parking subject to a right to move those spaces

1.12 To use those areas shown coloured [*Insert colour*] on [the Plans] [Plan [*Insert number*]] (or an equivalent number of parking spaces in any location or locations within or adjoining the Estate notified by the Landlord to the Tenant at any time) for the parking of [*Insert number*] vehicles belonging to persons working at or authorised visitors to the Premises.

1.13 [To use, on a first come first served basis, any cycle racks within the Estate to park bicycles.]]

9. **[Escape**

On foot only, in emergencies and for fire escape drills, to use all fire escape routes in the Estate designated by the Landlord for the use of the Tenant whether or not forming part of the Common Parts.]

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82 This definition is required only where the roof space is excluded from the Premises but the Tenant will be granted rights to use that roof space to install Plant or the Tenant will be granted a right to install Plant in a Plant Area outside the Premises.

83 Consider the Landlord's policy on staff parking within the Estate.

Part 2
Landlord's Reserved Rights

The following rights are excepted and reserved to the Landlord:

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

1.1 Support and shelter for the remainder of the Estate 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.

11. **Running of services**

The passage and running of Supplies from and to the remainder of the Estate through existing Conducting Media (if any) within the Premises.

12. **Entry on to the Premises**[84]

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 and the Estate 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;

1.4.2 inspect, repair, alter, decorate, rebuild or carry out other works on the Estate;

1.4.3 inspect, clean, maintain, replace or repair any existing Conducting Media within the Premises but serving the Estate;

1.4.4 carry out any Services; or

1.4.5 for any other reasonable management purpose.

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 3.3 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 is expressly entitled or required to do under this Lease or for any other reasonable purpose in connection with this Lease.

13. **Roofs**

To use all roofs and external walls (other than shopfronts below the upper level of the shop fascia) of the Premises to install, maintain and renew any illumination, signs or other forms of display, or other fixtures.

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[84] The safeguards that tenants ordinarily look for where a landlord has a right of entry are contained in Clause 5.5. There is no need to repeat them in this Part of the Schedule.

14. **Common Parts and Conducting Media**

1.7 In an emergency, or when works are being carried out to them, to close off or restrict access to the Common Parts, so long as (except in an emergency) alternative facilities are provided that are not materially less convenient.

1.8 To change, end the use of or reduce the extent of any Common Parts or Conducting Media so long as:

1.8.1 alternative facilities are provided that are not materially less convenient; or

1.8.2 if no alternative is provided, the use and enjoyment of the Premises is not materially adversely affected.

1.9 From time to time to designate areas within the Common Parts for particular purposes including as service areas, car parks, service roads and footpaths and from time to time to reduce the size of any designated areas, so long as the remaining areas are reasonably adequate for their intended purposes.

1.10 [To run Conducting Media over, under or along those areas allocated for the use of the Tenant under paragraph 5 of Part 1 of the Schedule (or allow others to do so) so long as they do not materially adversely affect the Tenant's use of those areas.]

1.11 To allow trade barrows, stands, festive activities, promotional activities and other commercial activities to take place on or to operate from the Common Parts, so long as there is no material obstruction to the use of those Common Parts by those having rights over them.

15. **Adjoining premises**

Subject to Clause 6.4, to carry out works of construction, demolition, alteration or redevelopment on the Estate and 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.

16. **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.

Part 3
Rent Review[85]

17. **Defined terms**

This Part of the Schedule uses the following definitions:

"**Assumptions**" means that:

(a) if the Estate or any part of it has been damaged or destroyed, it has been reinstated before the Rent Review Date;

(b) the Premises are fit for immediate occupation and use by the willing tenant;[86]

(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 or persistent breach by the Landlord) the Landlord has complied with the Landlord's obligations in this Lease; and

(e) on the grant of the Hypothetical Lease the willing tenant will receive the benefit of a rent free period, rent concession or any other inducement of a length or amount that might be negotiated in the open market for fitting-out purposes and that the Market Rent is the rent that would become payable after the end of that period or concession or payment of that inducement.[87]

"**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 other part of the Estate or 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][88], 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

(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);

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

86 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.

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

88 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

(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][89].

"**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;

(iii) any break clause in this Lease, other than any right to terminate in Part 5 of the Schedule[90][;

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

(v) the definitions of "Base Rent" and "Turnover Rent", the reference to those terms in Clause 4.1, the entirety of Clause 3.8 and Part 9 of the Schedule and the words "Except when Clause 3.8 applies" in Clause 3.3 and the entirety of paragraph 5 of Part 5 of the Schedule[; and

(vi) the entirety of Clause 4.15.3 and Part 10 of the Schedule];

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

(d) with vacant possession;

(e) without any premium payable by or (subject to paragraph (e) of the definition of "Assumptions") to the willing tenant;

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

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

(h) 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].[91]

"**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.[92]

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89 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.

90 All break clauses in this Lease are ignored (other than those that arise following a failure to reinstate insured or uninsured damage in Part 5 of the Schedule). Any corresponding break clauses in the Hypothetical Lease should be included in paragraph (h) 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.

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

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

18. **Rent review**

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

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.

19. **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][93]. 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.][94]

[The expert will:

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

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

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

1.3.4 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).]

1.4 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.

1.5 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.

1.6 Responsibility for the costs of referring a dispute to an [expert] [arbitrator], including costs connected with the appointment of the [expert] [arbitrator] but not the legal and other professional costs of any party in relation to a dispute, will be decided by the [expert] [arbitrator] and failing a decision, they will be shared equally between the parties.

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

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

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

1.8 following the ascertainment of the reviewed Rent, the Landlord will demand the difference (if any) between the amount the Tenant has actually paid and the amount that would have been payable had the reviewed Rent been ascertained before the Rent Review Date; and

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

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

1.9 the Tenant must pay that difference to the Landlord within 10 Business Days after that demand and interest at [three][95] 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 arrear.

21. **Rent review memorandum**[96]

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 two extracts (one being provided for the Landlord and one for the Tenant).

22. **Time not of the essence**

For the purpose of this Part of the Schedule time is not of the essence.[97]

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

[96] Please refer to the PSG Rent Review Memorandum in this context

[97] 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
Services and Service Charge[98]

23. **Administrative provisions**

1.1 **Accounting Period**

1.1.1 For any Accounting Period that does not fall wholly within the Term, the Service Charge will be a due proportion calculated on the assumption that the service charge expenditure accrues equally on a day to day basis throughout the period.

1.1.2 If the Landlord notifies the Tenant of a change in the date on which the Accounting Period ends, the Accounting Period current at the date of the notice may be shortened or extended to less than or more than 12 months to take into account in the change in the date.

1.2 **Service Charge Statements**

1.2.1 After the end of each Accounting Period, the Landlord will supply the Tenant with a statement (the "Service Charge Statement") for that Accounting Period of:

(a) the Service Costs; [and

(b) the Estate Contribution;] and

(c) the Service Charge payable.[99]

1.2.2 The Landlord must take reasonable steps to supply the Service Charge Statement within four months after the end of each Accounting Period.

1.2.3 The Service Charge Statement must include a certificate signed by the Landlord or the Landlord's managing agent, accountant or surveyor (who may be an employee of either the Landlord or a Group Company of the Landlord) certifying that it gives a true and fair summary of the matters to which it relates.

1.2.4 In calculating the Service Costs, the Landlord may include:

(a) the Landlord's own reasonable management fee where the Landlord, a Group Company of the Landlord or an employee of either of them undertakes the management of the Services; and

(b) interest costs reasonably incurred by the Landlord on borrowing from a UK clearing bank or, if the Landlord uses its own moneys, an amount equal to the interest costs that would have been incurred if the Landlord had borrowed from a UK clearing bank at reasonable commercial rates. Interest costs will be reasonably incurred under this paragraph if:

(i) the Landlord has to meet an immediate liability where the service charge funds held by the Landlord are insufficient for that purpose and the shortfall does not result from:

(aa) any caps on the amount of service charge recoverable;

(bb) any non-payment of service charges by other tenants of Lettable Units; or

(cc) any Lettable Unit being unlet; or

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98 The administrative provisions have deliberately been kept brief because much is covered by the Landlord's obligations in paragraph 2 of Part 4 of the Schedule to take into consideration the administrative, accounting, procurement, management and operational provisions of the Service Charge Code. There is deliberately no provision for a reserve or sinking fund.

99 The Landlord may have agreed to cap the amount of service charge payable by the Tenant.

(ii) the Landlord decides to incur service charge expenditure in one Accounting Period and recover that expenditure over two or more Accounting Periods.

1.2.5 Service Costs incurred in one Accounting Period, if not included in the Service Charge Statement for that Accounting Period for any reason, may be included in the Service Charge Statement for a subsequent Accounting Period.

1.2.6 The Tenant will be entitled on prior appointment to inspect evidence of the Service Costs[and the Estate Contribution] at the Landlord's head office or any other location the Landlord specifies. The Tenant must ask to inspect the evidence not later than four months after receipt of the Service Charge Statement.

1.3 **On-account payments of Service Charge**

1.3.1 Until the Service Charge for each Accounting Period has been calculated, the Tenant must pay, by equal [monthly] [quarterly] payments on the Rent Days, a provisional sum by way of Service Charge at the level that the Landlord requires.

1.3.2 The Tenant must also pay on demand any sum or sums that the Landlord requires where the Landlord will be obliged to incur any Service Costs and the sums held on account by the Landlord are insufficient to meet those costs.

1.3.3 Sums payable under this paragraph 1.3 shall be taken into account when calculating the amounts payable by the Tenant to the Landlord or by the Landlord to the Tenant under paragraph 1.4 of this Part of the Schedule.

1.4 **Balancing payments of Service Charge**

1.4.1 When the Service Charge for each Accounting Period has been calculated:

(a) the Tenant must pay any amount due from it on demand; and[100]

(b) the Landlord must credit any amount due to the Tenant against the next payment or payments to be made by the Tenant under paragraph 1.3 of this Part of the Schedule. Any amount owing at the End Date must be repaid to the Tenant within one month of its calculation.

1.4.2 The End Date will not affect the Tenant's obligation to pay or the Landlord's right to recover Service Charge after the End Date where this has not been calculated and demanded before the End Date.

1.5 **Service Charge exclusions**

The Landlord must not include any of the costs set out in paragraph 5 of this Part of the Schedule in the Service Costs.[101]

1.6 **Service Charge disputes**

1.6.1 If any dispute arises in connection with the Service Charge, the Landlord and the Tenant must attempt to resolve it by appropriate alternative means before resorting to court proceedings.

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100 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 4.5.

101 Check that the costs listed in paragraph 3.2 of this Part of the Schedule are identical across each lease in the Estate. If a concession is made to a particular tenant:

(a) a separate service charge reconciliation will be required for that tenant; and

(b) the Landlord will not be able to recover any shortfall from the other tenants in the Estate as concessions offered to one tenant cannot be recovered from other tenants.

1.6.2 Except in relation to obvious errors, the Tenant must not raise any dispute in connection with the Service Charge Statement more than four months after the Service Charge Statement has been delivered to the Tenant.[102]

1.7 **Variation in the proportion of the Service Charge payable**[103]

1.7.1 In calculating the [Tenant's Proportion] [Service Charge] for any of the Services, the Landlord's surveyor may make any adjustment that is fair and reasonable in all the circumstances, taking into consideration the relative degree of benefit obtained by the Tenant and other tenants at the Estate from those Services, including by dividing the Services into separate categories and applying weighting to those categories to take into account differing uses or operating hours or other relevant factors.

1.7.2 If there is any change in the extent of the Estate, the Landlord must, where it is appropriate to do so, vary the [Tenant's Proportion] [Service Charge] as is reasonable to take account of that change but the [Tenant's Proportion] [Service Charge] will not materially increase solely as a result of any change in the extent of the Estate.

1.7.3 The [Tenant's Proportion] [Service Charge] must not be increased by reason only that any Lettable Units:

(a) are or have been unlet;

(b) are let on terms that do not require the tenant or other occupier to pay a service charge; or

(c) are let on terms that cap the liability of any tenant or other occupier for service charge.

24. **Landlord's obligations**

1.8 **Provision of Services**

Option 1: The Landlord must supply the Estate Services and the Additional Services[104]

The Landlord, acting reasonably and in the interests of good estate management:

1.8.1 must supply the Services in an efficient manner at all appropriate times; and[105]

1.8.2 may vary, reduce or extend the Services or change the way in which it undertakes or provides them.

Option 2: The Landlord must supply the Estate Services and may supply the Additional Services

The Landlord, acting reasonably and in the interests of good estate management:

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102 The Tenant has four months to challenge a service charge statement before it becomes binding. Traditionally there has been no right of challenge, unless there was a clear error, but that is considered unjust. A reference to alternative dispute resolution is consistent with the Service Charge Code.

103 Refer to "Tenant's Proportion" only where floor weighting applies to the service charge calculations. See also the definitions of "Gross Internal Area", "Service Charge", "Tenant's Proportion" and "Weighted Area" and paragraph 6 of Part 4 of the Schedule.

104 The service charge provisions have been drafted so that if the Landlord will be under an obligation to provide both the Estate Services and the Additional Services without any discretion in relation to the "Additional" services, you can retain the separate Parts in this Schedule setting out the respective Services.

105 The service charge provisions give the Landlord flexibility over the times during which the Services are to be provided and, in paragraph 1.7 of this Part of the Schedule, to vary the proportion of the Service Costs payable by the Tenant if they gain greater benefit from those services (for example a Tenant who occupies 24 hours a day in a building where other tenants occupy only during normal business hours). Nevertheless, consider whether the Landlord should be under an obligation to provide Services only during core trading hours with an express obligation on the Tenant to pay for Service Costs where it requires Services to be provided outside those hours.

1.8.3 must supply the Estate Services in an efficient manner at all appropriate times;[106]

1.8.4 may supply all or any of the Additional Services and, if it does so, it will do so in an efficient manner at all appropriate times; and

1.8.5 may vary, reduce or extend the Services or change the way in which it undertakes or provides them.

1.9 **Landlord's rights and responsibilities**

1.9.1 The Landlord:

(a) may from time to time employ such agents, contractors or others as the Landlord decides;

(b) will not be responsible for any interruption in the supply of the Services due to any circumstances outside the Landlord's control or due to any necessary maintenance, repair, replacement, renewal, servicing, inspection or testing, but must take reasonable steps to restore the supply as soon as reasonably practicable;

(c) must take into consideration the administrative, accounting, procurement, management and operational provisions of the Service Charge Code for so long as it is in effect insofar as it is:[107]

(i) reasonably practicable to do so;

(ii) consistent with the Landlord's obligations under this Lease; and

(iii) consistent with the economic and efficient management of the Estate (taking into consideration all the circumstances including the terms of the leases of other Lettable Units); and

(d) must take into consideration current practice in estate management if the Service Charge Code is no longer published.

1.9.2 [The Landlord will take reasonable steps to notify the Tenant in advance of the service charge budget for each Accounting Period and of any material changes in the service charge budget that subsequently arise.]

25. **Estate Services**[108]

1.10 Repairing (and as necessary renewing, rebuilding and replacing), decorating, maintaining and cleaning the Common Parts and Conducting Media, including both ordinary and extraordinary repairs and regardless of (1) the age or state of dilapidation of the Common Parts and Conducting Media and (2) the cause of damage, deterioration or destruction even if the cause is a latent or inherent defect.

1.11 Repairing (and as necessary renewing, rebuilding and replacing), decorating, maintaining and cleaning any facilities (including means of access, Conducting Media, party walls and other boundary structures) used in common between the Estate and any adjoining premises, including both ordinary and extraordinary repairs and regardless of (1) the age or state of

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106 The service charge provisions give the Landlord flexibility over the times during which the Services are to be provided and, in paragraph 1.7 of this Part of the Schedule, to vary the proportion of the Service Costs payable by the Tenant if they gain greater benefit from those services (for example a Tenant who occupies 24 hours a day in a building where other tenants occupy only during normal business hours). Nevertheless, consider whether the Landlord should be under an obligation to provide Services only during core trading hours with an express obligation on the Tenant to pay for Service Costs where it requires Services to be provided outside those hours.

107 There is deliberately no absolute obligation to comply with the Code. Consider the extent to which the Landlord is happy to comply with the obligations in this paragraph and in paragraph 2.2.1(d) of this Part of the Schedule.

108 The distinction between the "Estate Services", which the Landlord must provide, and the "Additional Services", which the Landlord may choose to provide, will need careful consideration with the client.

dilapidation of the facilities used in common and (2) the cause of damage, deterioration or destruction even if the cause is a latent or inherent defect.

1.12 Lighting the Common Parts and any facilities used in common between the Estate and any adjoining premises.

1.13 Providing hot and cold water to, and maintaining operational supplies in, any toilets in the Common Parts.

1.14 Paying Supply Costs incurred in providing the Services.

1.15 [Storing, compacting, recycling and disposing of refuse.]

1.16 Providing, inspecting, maintaining (including by maintenance contracts and insurance against sudden and unforeseen breakdown), repairing, renewing, replacing, upgrading and operating:

1.16.1 all plant, machinery, apparatus and vehicles used in providing the Estate Services and all signage in the Common Parts; and

1.16.2 security, fire-fighting and fire detection equipment (excluding portable fire extinguishers in the Premises), fire alarm systems, public address systems, telecommunications systems, closed circuit television systems and traffic control.

1.17 Employing or procuring all staff (including remuneration, incidental benefits and all associated costs and overheads) for the management and security of the Estate and otherwise in connection with the Estate Services.

1.18 Carrying out any works and providing and maintaining all facilities that are required under any Act or by insurers in relation to the Estate.

1.19 Managing and administering service charge accounts for the Services and the Estate including, where relevant, certifying, examining or auditing those accounts.

26. **Additional Services**[109]

1.20 Paying all existing and future rates, taxes, duties, charges and financial impositions charged on the Common Parts or the Estate as a whole (and a fair proportion of those levied on the Estate along with any adjoining premises).

1.21 Providing accommodation for staff, plant, furniture, equipment and vehicles used in providing the Services, and all outgoings on them.

1.22 Employing or procuring agents, contractors or others as the Landlord decides in connection with the Services.

1.23 Planting, replanting and maintaining landscape features in the Common Parts.

1.24 Providing customer service facilities for visitors to the Estate, including guest Wi-Fi services.

1.25 Providing pest and infection control.

1.26 Gritting, and clearing snow from, the Common Parts.

1.27 Promoting and advertising the Estate and staging activities and exhibitions within the Estate.

1.28 Providing seasonal decorations within the Estate.

1.29 Providing any further services for maintaining and securing the amenities of the Estate.

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[109] The distinction between the "Estate Services", which the Landlord must provide, and the "Additional Services", which the Landlord may choose to provide, will need careful consideration with the client.

1.30 Auditing health and safety requirements for the Estate and, where required by law or reasonable and cost-effective to do so, implementing the recommendations of that audit.

1.31 Auditing disabled access requirements for the Estate and, where required by law or reasonable and cost-effective to do so, implementing the recommendations of that audit.

1.32 Auditing the Environmental Performance of the Estate and, where reasonable and cost-effective to do so, implementing the recommendations of any environmental management plan the Landlord has for the Estate from time to time.

1.33 Carrying out or implementing any Recommended Improvement Measures, Operational Rating Measures or any other works or measures to implement any Action Plan in respect of all or any part of the Common Parts (or any other similar or replacement obligation) from time to time.[110]

27. **Service Charge exclusions**

1.34 Costs arising from any damage or destruction to the Estate caused by an Insured Risk or an Uninsured Risk.

1.35 Capital costs of the construction, alteration, redevelopment or extension of the Estate.

1.36 Costs of upgrading, innovation or improvement resulting from any repair, maintenance, reinstatement, rebuilding or replacement, but this will not prevent the Landlord including costs within the Service Costs which arise:

1.36.1 where an item is to be replaced by way of repair and the replacement is broadly the modern day or up-to-date equivalent of what was there previously;

1.36.2 where the Landlord considers replacement to be more economical than repair (and the Landlord is entitled to take into consideration the medium/long-term benefits of replacement);

1.36.3 where an item has to be replaced or installed to comply with any Act or the requirements of the Landlord's insurers; or

1.36.4 where replacement or renewal is reasonable and cost-effective and will reduce operating costs for the benefit of the tenants of the Lettable Units[or improve for the tenants the Environmental Performance of the Estate].

1.37 Costs incurred in respect of any unlet Lettable Unit.

1.38 Rent collection costs.

1.39 Costs incurred in dealing with any lettings or rent reviews at the Estate.

1.40 Unrecovered costs due from another tenant of the Estate.

1.41 Costs incurred in dealing with the Landlord's interest in the Estate, including the costs of advertising and promotional or publicity activities relating to any proposed dealing with the Landlord's interest in the Estate.

1.42 [Costs incurred in running and maintaining the Car Park at the Estate where parking is charged for and the Landlord keeps the charges.][111]

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110 As drafted this enables the Landlord to recover the costs of implementing any recommended improvement measures and/or any costs associated with monitoring energy performance and emissions data as per an applicable Action Plan. It may not always be appropriate or realistic to expect the Tenant to meet such costs and consideration to alternative arrangements should be given e.g. 50/50 split in costs between Landlord and Tenant. See FN78 for background.

111 This must be considered carefully on an estate by estate basis. Where costs are to be excluded and the Landlord is to keep the charges the definition of Estate Contribution will need to exclude those charges. If car park charges are to be included in the definition of Estate Contribution, this paragraph 5.9 should be deleted.

28. **Weighting**[112]

1.43 **Discounting of the Gross Internal Area**

The Gross Internal Area of each Lettable Unit is ascertained and then discounted as set out below:

Gross Internal Area of Units in Metres Squared	Percentage Multiplier
[First 500 square metres (5,382 square feet)]	[100]
[Next 1,000 square metres (10,764 square feet)]	[80]
[Next 2,000 square metres (21,528 square feet)]	[60]
[Next 1,000 square metres (10,764 square feet)]	[50]
Remainder	[40]

1.44 [**Effect of sub-letting on discounting**

If the Tenant sub-lets part of the Premises then the Tenant's Proportion will be recalculated on the basis that each part sub-let by the Tenant and the part (if any) retained by the Tenant will be separately discounted in accordance with the table set out above.]

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112 Include paragraph 6 of this Part of the Schedule only where floor weighting applies to the service charge calculations. See also the definitions of "Gross Internal Area", "Service Charge", "Tenant's Proportion" and "Weighted Area" and paragraph 1.7 of Part 4 of the Schedule.

Part 5
Insurance and Damage Provisions

29. **Tenant's insurance obligations**

1.1 The Tenant must pay on demand:

1.1.1 a fair and reasonable proportion of:

(a) the sums the Landlord pays[113] to comply with paragraphs 2.1.1 and 2.1.2 of this Part of the Schedule;

(b) if not recovered through the Service Charge, the sums the Landlord pays to insure all plant, machinery, apparatus and vehicles used in providing the Services;

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

(d) the amount of any excess or deductible under any insurance policy that the Landlord incurs or will incur in complying with paragraphs 2.3 and 2.4 of this Part of the Schedule;

1.1.2 the whole of the sums the Landlord pays to comply with paragraph 2.1.3 of this Part of the Schedule;

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

1.1.4 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 sub-tenant'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 or the Estate, 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.

30. **Landlord's insurance obligations**[114]

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

1.6.1 the Estate against the Insured Risks in its 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 Estate; and

1.6.3 loss of the Rent and Service Charge for the Risk Period,

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

[114] The Landlord is obliged to insure the whole of the Estate. If there is damage by an Insured Risk, the obligation to reinstate is limited to the reinstatement of the Premises and, if necessary, the means of access to them over the Estate. There is no obligation to reinstate tenant's fixtures.

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:

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 and, if necessary, the means of access to them over the Estate following destruction or damage by an Insured Risk.

1.9 Where it is lawful to do so, the Landlord must reinstate the Premises and, if necessary, the means of access to them over the Estate 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 Nothing in this paragraph 2 imposes any obligation on the Landlord to insure or to reinstate tenant's fixtures forming part of the Premises or the Estate.

1.11 The Landlord's obligations under paragraphs 2.3 and 2.4 of this Part of the Schedule will not apply unless and until the Tenant has paid the amounts referred to in paragraph 1.1.1(d) and, where applicable, paragraph 1.1.3 of this Part of the Schedule.

1.12 If there is destruction or damage to the Estate by an Uninsured Risk that leaves the whole or substantially the whole of the Premises unfit for occupation and use or inaccessible over the Estate and the Landlord notifies the Tenant within 12 months afterwards that the Landlord wishes to reinstate, paragraphs 2.3 and 2.4 of this Part of the Schedule will then apply as if the damage or destruction had been caused by an Insured Risk.

1.13 Subject to the insurance premiums being reasonable and proper and reasonably and properly incurred, the Landlord will be entitled to retain all insurance commissions for its own benefit.

31. **Rent suspension**

1.14 Paragraph 3.2 of this Part of the Schedule will apply if the Estate is destroyed or damaged by any Insured Risk [or Uninsured Risk][115] so that the Premises are unfit for occupation or use or inaccessible over the Estate. Paragraph 3.2 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 1.1.3 of this Part of the Schedule.

1.15 Subject to paragraph 3.1 of this Part of the Schedule, the Rent and Service Charge or a fair proportion of them, will not be payable from and including the date of damage or destruction until the earliest of:

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

1.15.2 the end of the Risk Period; and

1.15.3 the End Date.

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115 Consider whether and from which date rent suspension should apply following uninsured damage.

1.16 If paragraph 3.2 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.

1.17 If paragraph 3.2 of this Part of the Schedule applies:

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

1.17.2 the Tenant must pay to the Landlord on demand the Rent and Service Charge for the period starting on the date they again become payable to but excluding the next Rent Day.

1.18 Any dispute about the application of this paragraph 3 will be decided at the request of either party by a single arbitrator under the Arbitration (Scotland) Act 2010.[116]

32. **Termination**

1.19 This paragraph 4 applies if there is destruction or damage to the Estate by an Insured Risk [or an Uninsured Risk] that leaves the whole or substantially the whole of the Premises unfit for occupation and use or inaccessible over the Estate.

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

1.20.1 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

1.20.2 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.

1.21 If, when the Risk Period ends, the Estate has not been reinstated sufficiently so that Premises are again fit for occupation and use and accessible over the Estate 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 1.1.1(d) and, where applicable, paragraph 1.1.3 of this Part of the Schedule.

1.22 For the purposes of paragraphs 3.2.2 and 4.3 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 2.7 of this Part of the Schedule.

1.23 If this Lease ends under this paragraph 4:

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

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

1.23.3 the Landlord will be entitled to retain all insurance moneys.

33. **Turnover Rent**

Until the arrangements in Part 9 of the Schedule come to an end in accordance with paragraph 12 of Part 9 of the Schedule, references in this Schedule to the Rent will be read as references to the Base Rent and the Turnover Rent.

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

Part 6
Permitted Works[117]

34. **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 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 Premises or the Estate and as otherwise required from owners, tenants or occupiers of any part of the Estate or 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.

35. **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 diligently and without interruption, and in any event before the End Date;[118]

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 [in accordance with the reasonable principles, standards and guidelines set out in any relevant guide or handbook published by the Landlord from time to time for tenant's works carried out at the Estate;]

1.2.5 without using Prohibited Materials;

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117 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.

118 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.

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

1.2.7 without affecting the structural integrity of the Premises; and

1.2.8 with as little interference as reasonably practicable to the owners and occupiers of any other parts of the Estate or 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 Until practical completion of the Permitted Works, the Tenant must:

1.5.1 insure any Permitted Works for their full reinstatement cost (including professional fees) against loss or damage by the Insured Risks with a reputable insurer and provide the Landlord with a summary of the main terms of the insurance; and

1.5.2 reinstate any of the Permitted Works that are damaged or destroyed before their completion.

1.6 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.[119]

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

1.7.1 notify the Landlord of their completion;

1.7.2 obtain any Consents that are required on their completion;

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

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

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

1.7.6 supply the Landlord with two complete sets of as-built plans showing the Permitted Works; and

1.7.7 ensure that the Landlord is able to use and reproduce the as-built plans for any lawful purpose.

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

1.8.1 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;

1.8.2 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

1.8.3 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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[119] 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.

1.9 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):

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

1.9.2 pay the Landlord's costs of doing so.

1.10 [The Tenant must label all Plant installed outside the Premises as part of the Permitted Works in the manner requested by the Landlord and must not place any other signs or advertisements on the Plant other than signs that are legally required to be displayed on the Plant.][120]

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

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

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

1.12 that any Permitted Works may lawfully be carried out;

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

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

120 This clause can be deleted if the Tenant will not have the right to install Plant on the Plant Area.

Part 7
Sustainability[121]

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

The Landlord and the Tenant confirm that they:

1.1 [wish to promote and improve the Environmental Performance of the Premises and the Estate; and

1.2 wish to co-operate with each other (without legal obligation) to identify appropriate strategies for the improvement of the Environmental Performance of the Premises and the Estate.]

OR[122]

1.3 [wish to promote and improve the Environmental Performance of the Premises and the Estate; and

1.4 wish to 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 and the Estate are carried out and implemented in accordance with the provisions in the Action Plan.]

38. **Environmental forum**

1.5 The Landlord [may] [must] provide an environmental forum (the "**Forum**") that will meet on a regular basis to:

1.5.1 consider the adequacy and improvement of data sharing on energy and water use, waste production and recycling;

1.5.2 review the Environmental Performance of the Lettable Units and the Estate;

1.5.3 agree targets and strategies for a travel plan for travelling to and from the Estate; and

1.5.4 agree targets and strategies to improve the Environmental Performance of the Lettable Units and the Estate.

1.6 The Forum may take any form that affords an appropriate means of communication and exchange of views, whether by meeting in person or not.

1.7 The Landlord and the Tenant will each nominate a suitable person to participate in the Forum. They will try to ensure that their nominees attend and participate in any Forum meetings or discussions of which appropriate advance notice has been given.

1.8 All tenants of the Estate will be entitled to attend and take part in the Forum.

1.9 [The Landlord and the Tenant may agree to allow third parties to participate in the Forum for a specified period or for a specified purpose.]

1.10 [The Landlord will try to ensure that a representative of any managing agents appointed by the Landlord attends and participates in any Forum meetings or discussions of which appropriate advance notice has been given.]

1.11 Where any of the issues considered, reviewed or agreed in the Forum relate exclusively to the Premises, either the Landlord or the Tenant may request that they are discussed between them and their authorised agents only (and not with any other permitted participants in the Forum).

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121 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.

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

39. **Data sharing**[123]

1.12 The Landlord and the Tenant will share the Environmental Performance data they hold relating to the Premises and the Estate. This data will be shared on a regular basis [not less frequently than quarterly] with each other, with any managing agents appointed by the Landlord and with any third party that the Landlord and the Tenant agree should receive the data.

1.13 The Landlord and the Tenant will where appropriate keep the data shared under this paragraph confidential but recognise that either party may be required to disclose such information to third parties for the purposes of compliance with a Legal Requirement. They will use that data only for the purpose of:

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

1.13.2 monitoring and improving the Environmental Performance of the Premises and the Estate; and

1.13.3 measuring the Environmental Performance of the Premises and the Estate against any agreed targets.

1.14 Nothing in this paragraph 3 will oblige the Landlord to disclose to the Tenant Environmental Performance data received from any other tenants or occupiers of the Estate.

1.15 The Landlord will not disclose Environmental Performance data provided by the Tenant to any other tenants or occupiers of the Estate.

1.16 The Landlord must ensure where appropriate that any managing agents appointed by the Landlord are placed under a similar obligation to keep shared data confidential on the same terms as this paragraph 3.

40. **Alterations**

1.17 Both the Landlord and the Tenant will take into consideration any impact on the Environmental Performance of the Premises and the Estate from any proposed works to or at the Premises[or the Estate].

1.18 The Tenant agrees to allow the Landlord (if the Landlord so wishes and on reasonable prior notice) to install, at the Landlord's own cost, separate metering of utilities used in the Common Parts and the Premises[and the Landlord agrees to allow the Tenant to install separate [sub-]metering of the utilities used in the Premises][124].

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123 See data sharing obligation on Tenant at Clause 4.26.

124 The installation of a completely separate metered supply for the Premises may involve costly works to the remainder of the Landlord's property to establish a new supply and install the meters. Consider whether this right should be given to the Tenant.

Part 8
Subletting

41. **Defined terms**

This Part of the Schedule uses the following definitions:

"**Approved Sub-lease**" 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, Service Charge 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;[125] and

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

(e) 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[126] 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;

(f) [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];[127]

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

(i) obligations by the Sub-undertenant not to assign the Sub-undertenant's right to the Sub-underlet Premises 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

(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

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125 Some landlords may require the rent review dates in the Sub-lease 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.

126 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.

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

Subtenant but with the additional provision that no subleases of whole or part will be created out of that further sublease];] and

(h) 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;]

OR

[any part of the Premises:

(a) that is self-contained;

(b) capable of separate beneficial occupation;

(c) having independent means of access, for general access and for servicing, from the public highway, from the Common Parts or from those parts of the Premises approved by the Landlord as common parts for the use and enjoyment of the Tenant and any permitted subtenants of the Premises;

(d) has a Gross Internal Area of not less than [*Insert number*] square [feet] [metres] nor more than [*Insert number*] square [feet] [metres]; and

(e) that, once sublet, leaves the remainder of the Premises self-contained and capable of separate beneficial occupation with a Gross Internal Area of not less than [*Insert number*] square [feet] [metres];]]

"**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].

42. **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].]

43. **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 Sub-lease.

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 9
Base Rent and Turnover Rent

44. **Defined terms**

This Part of the Schedule uses the following definitions:

"**Annual Turnover Certificate**" means the certificate to be provided by the Tenant in accordance with paragraph 4.1 of this Part of the Schedule;

"**Authorised Group Company**" means a Group Company of the Tenant who is carrying on materially the same trade or business as [*Insert name of initial tenant*];[128]

"**Base Rent**" means [80%] of the Rent payable under this Lease;[129]

["**Default On-Account Payment**" means [*Insert amount in figures*][130];][131]

"**Normal Shopping Day**" means any day on which [the majority of the shops within the Estate are open for business][132] [the Tenant should be open for business in accordance with its obligations in paragraph 8.1 of this Part of the Schedule][133] and "Normal Shopping Days" has a corresponding meaning;

"**On-Account Payment**" means:

(a) in respect of the first Turnover Year £[*Insert amount*]; and

(b) in respect of each succeeding Turnover Year[:

(i) up to the date of service of a demand in accordance with paragraph 4.3 of this Part of the Schedule for the preceding Turnover Year, the On-Account Payment for the preceding Turnover Year; and

(ii) from (and including) the date of service of a demand in accordance with paragraph 4.3 of this Part of the Schedule for the preceding Turnover Year [one-quarter] [one-twelfth] of the Turnover Rent payable in respect of the preceding Turnover Year;][134]

OR

[the amount by which the Specified Percentage of the Turnover in each On-Account Period exceeds the Base Rent payable in respect of that On-Account Period;][135]

"**On-Account Period**" means each period starting on a Rent Day and ending on the day before the following Rent Day but:

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128 This definition allows the turnover provisions to endure on assignations of the tenant's right to this Lease to group companies where the incoming tenant is carrying out the same trade or business as the original tenant. How appropriate this is will depend on the identity of the original tenant.

129 This tracks the Base Rent to a percentage of Rent. This is why the wording in Clause 3 of this Lease preserving the review mechanism is important, and also why paragraph 6 is needed in this Part of the Schedule to preserve a fair result. Turnover only leases would define Base Rent as a peppercorn (£1).

130 This should be a figure to give the Tenant an incentive to deliver a certificate on time, but it is important to avoid a penalty. This payment can be expressed as a percentage of the Rent or Base Rent. For example, if the Base Rent is 80% of the Open Market Value, then an appropriate default payment might be 25/30% of the Base Rent payable in respect of the relevant period. The figure should reflect a genuine assessment of the anticipated payment had the turnover information been provided plus any costs that the Landlord might reasonably incur in enforcing the obligation to deliver the turnover information.

131 This definition should be used only where the on-account turnover rent payments will be based on the Tenant's actual turnover for the on-account period.

132 Use this wording where the Tenant will not be subject to the terms of a keep open obligation.

133 Use this wording where the Tenant will be subject to a keep open obligation.

134 Use this wording where the on-account turnover rent payment will be a fixed estimate for the first Turnover Year and a proportion of the previous year's Turnover Rent in the second and subsequent Turnover Years.

135 Use this wording where the on-account turnover rent payments will be based on the Tenant's actual turnover for the on-account period.

(a) the first On-Account Period will be the period starting on the [Rent Commencement Date] and ending on the day before the following Rent Day; and

(b) the last On-Account Period will be the period starting on the last Rent Day before the Turnover End Date and ending on the Turnover End Date;

["**On-Account Turnover Certificate**" means the certificate to be provided by the Tenant in accordance with paragraph 3.2 of this Part of the Schedule;][136]

"**Records**" means all books and other documents, records or information (including computer tapes, discs and other storage systems, cash register tapes, bank statements, Till Rolls and any tax returns that relate to VAT or any similar or substituted tax) that are or ought in the reasonable opinion of the Landlord to be kept by the Tenant for the purpose of ascertaining and verifying the Turnover;

"**Specified Percentage**" means [10]%;

"**Till Rolls**" means the printed rolls produced by the tills installed at the Premises and all computerised records (both hard copies and on CD ROM or an equivalent recording medium) recording all sales and entries to the tills and, in the case of EPOS tills, all polling reports and transactions and turnover reports produced on a daily and weekly basis;

"**Turnover**" means Turnover as defined in paragraph 7 of this Part of the Schedule;

"**Turnover End Date**" means the final day that the arrangements in this Part of the Schedule apply;

"**Turnover Rent**" means the amount by which the Specified Percentage of the Turnover in each Turnover Year exceeds the Base Rent payable in respect of that Turnover Year; [137]

"**Turnover Year**" means a period of one year falling within the Term and ending on and including a Year End but:

(a) the first Turnover Year will be the period starting on [the Rent Commencement Date] and ending on the Year End that follows or if that Year End is less than [three] months after the commencement of the first Turnover Year, ending on the second following Year End; and

(b) the last Turnover Year will be the period starting on the day after the last Year End before the Turnover End Date and ending on the Turnover End Date; and

"**Year End**" means [*Insert date*] in each year.[138]

45. **Payment of Base Rent and Turnover Rent**

1.1 Starting on the Rent Commencement Date[139], instead of the Rent the Tenant must pay as a rent an annual sum equivalent to:

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136 This definition should be used only where the on-account turnover rent payments will be based on the Tenant's actual turnover for the on-account period.

137 This is the usual method for calculating the Turnover Rent. However, other formulae can be used if the Landlord wants the Turnover Rent to be calculated on a different basis.

138 It will be a matter of negotiation to decide an appropriate year end, but one must take into account the preference of the Landlord to carry out turnover reconciliations at consistent times, but also the practicalities of the Tenant providing the more formal annual (possibly audited) turnover certificates, which may mean that the Tenant's financial year end is an appropriate date.

To avoid complex apportionments at the end of each Turnover Year where the Tenant pays turnover on account by reference to its actual turnover during each on-account period, the year end should correspond with the final day of an on-account payment period.

139 This clause assumes that Turnover Rent will start to be paid on the same date as the Base Rent. If the Landlord has given the Tenant a rent free period, the Turnover Rent should not be payable during that period. Additional drafting may be required if, following the expiry of the rent free period (or instead of a rent free period), the Tenant pays a concessionary rent (for example 50% of the Base Rent for the next six months). In these circumstances, you need to consider whether a corresponding reduction in the amount of Turnover Rent should be made during that period.

1.1.1 the Base Rent, payable at the same time as the Rent would otherwise have been payable under Clause 3.3 if the provisions of this Part of the Schedule did not apply; and

1.1.2 the Turnover Rent, payable as set out in this Part of the Schedule.

1.2 The remedies for late payment or non-payment of Rent will apply equally to late payment or non-payment of the sums payable under this Part 9 of the Schedule.

46. **On-account payments of Turnover Rent**

1.3 The Tenant must pay an On-Account Payment for each On-Account Period on account of the Turnover Rent. [The On-Account Payment must be paid in advance at the same time as the Base Rent.][140]

1.4 [Within [10 Business Days] after the end of each On-Account Period, the Tenant must deliver to the Landlord a certificate signed by [a senior manager of the Tenant] certifying:

1.4.1 the amount of the Turnover during that On-Account Period with the Turnover broken down on a daily basis; and

1.4.2 the number of Normal Shopping Days during that On-Account Period and the hours on those days when the Tenant was not open for trade during the whole of the Estate Opening Hours.

1.5 The On-Account Turnover Certificate must contain such details as to the method of calculation as the Landlord reasonably requires. The Tenant must ensure that the On-Account Turnover Certificate states as accurately as the Tenant is reasonably able to do so the amount of the Turnover during the relevant On-Account Period.

1.6 On receipt of an On-Account Turnover Certificate, the Landlord must calculate the On-Account Payment due for that On-Account Period and issue a demand to the Tenant for the On-Account Payment.

1.7 The Tenant must pay the On-Account Payment within 10 Business Days after receiving the demand referred to in paragraph 3.4 of this Part of the Schedule.

1.8 If the Tenant does not deliver an On-Account Turnover Certificate in accordance with paragraph 3.2 of this Part of the Schedule, the Tenant must, within [10 Business Days] after the end of the relevant On-Account Period, pay to the Landlord on account of the Turnover Rent an amount equal to the higher of:

1.8.1 the Default On-Account Payment; and

1.8.2 the On-Account Payment made in respect of the most recent On-Account Period in respect of which an On-Account Turnover Certificate has been provided.

1.9 If, having made a payment under paragraph 3.6 of this Part of the Schedule, the Tenant subsequently submits an On-Account Turnover Certificate:

1.9.1 if it appears that the amount paid is more than the On-Account Payment that would have been due had the certificate been submitted on time under paragraph 3.2 of this Part of the Schedule, then the Landlord will [repay the excess to the Tenant within 10 Business Days] [credit such excess to the next On-Account Payment due]; and

1.9.2 if it appears that the amount paid is less than the On-Account Payment that would have been due had the certificate been submitted on time under paragraph 3.2 of this Part of the Schedule, then the Tenant must pay the balance immediately with interest at the Interest Rate calculated from the date on which the relevant On-Account

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[140] The words in square brackets should be used only where the on-account turnover rent payment will be a fixed estimate for the first Turnover Year and a proportion of the previous year's Turnover Rent in the second and subsequent Turnover Years.

Payment should have been made pursuant to paragraph 3.5 of this Part of the Schedule.][141]

47. **Annual reconciliation**

1.10 Within [20 Business Days] after the end of each Turnover Year, the Tenant must deliver to the Landlord:

1.10.1 a certificate signed by [an independent and professionally qualified auditor] certifying the amount of the Turnover during that Turnover Year with the Turnover broken down on a daily basis; and

1.10.2 a certificate signed by a senior manager of the Tenant certifying the number of Normal Shopping Days during that Turnover Year and the hours on those days when the Tenant was not open for trade during whole of the Estate Opening Hours.

1.11 The Annual Turnover Certificate must contain such details as to the method of calculation as the Landlord may reasonably require. The Tenant must ensure that the Annual Turnover Certificate states as accurately as the Tenant is reasonably able to do so the amount of the Turnover during the relevant Turnover Year.

1.12 On receipt of an Annual Turnover Certificate, the Landlord must calculate the Turnover Rent for the Turnover Year and serve on the Tenant a demand for any balance due taking into account all On-Account Payments made in respect of the relevant Turnover Year.

1.13 The Tenant must pay any balance of Turnover Rent within [10 Business Days] of receiving the written demand referred to in paragraph 4.3 of this Part of the Schedule.

1.14 If the On-Account Payments exceed the Turnover Rent due in respect of the relevant Turnover Year then the balance will be credited to the next On-Account Payment due for the following Turnover Year (or refunded to the Tenant in respect of the last Turnover Year before the Turnover End Date).

1.15 If the Tenant does not deliver the Annual Turnover Certificate in accordance with paragraph 4.1 of this Part of the Schedule the Tenant must, within [20 Business Days] after the end of the relevant Turnover Year, pay to the Landlord on account of the Turnover Rent an amount equal to:

1.15.1 [*Insert percentage*][142] of the Rent; less

1.15.2 the total On-Account Payments made in respect of the Turnover Year in respect of which the Annual Turnover Certificate should have been provided.

1.16 If the calculation in paragraph 4.6 of this Part of the Schedule produces a negative figure, the Landlord will not be under any obligation to make a payment to the Tenant.

1.17 If, having made a payment under paragraph 4.6 of this Part of the Schedule, the Tenant subsequently submits an Annual Turnover Certificate:

1.17.1 if it appears that the amount paid is more than the balance of the Turnover Rent that would have been due had the certificate been submitted on time under paragraph 4.1 of this Part of the Schedule, then the Landlord will [repay the excess to the Tenant within 10 Business Days] [credit such excess to the next On-Account Payment due or repay it to the Tenant if the payment was made in respect of the last Turnover Year before the Turnover End Date]; and

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141 Paragraphs 3.2 to 3.7 of this Part of the Schedule should be used only where the on-account turnover rent payments will be based on the Tenant's actual turnover for the on-account period.

142 This payment should be expressed as a percentage of the Rent. If the Base Rent is 80% of the Rent, then an appropriate default payment might be 20-25% of the Rent. The figure should reflect a genuine assessment of the anticipated payment had the turnover information been provided plus any costs that the Landlord might reasonably incur in enforcing the obligation to deliver the turnover information.

1.17.2 if it appears that the amount paid is less than the balance of the Turnover Rent that would have been due had the certificate been submitted on time under paragraph 4.1 of this Part of the Schedule, then the Tenant must pay the balance immediately with interest at the Interest Rate calculated from the date on which the relevant balancing payment should have been made pursuant to paragraph 4.4 of this Part of the Schedule.

48. **Maintenance of Records**

1.18 The Tenant must maintain the Records fully and accurately while the arrangements in this Part of the Schedule apply and for a period of 12 months beyond the Turnover End Date.

1.19 The Tenant must keep the Records relating to the then current and two immediately preceding Turnover Years safely on the Premises or in such other place reasonably accessible for inspection as the Landlord approves. The Tenant must make the Records relating to these Turnover Years available for inspection at all reasonable times by a representative of the Landlord.

1.20 To preserve the operation of this Part of the Schedule and to enable the Turnover Rent to be accurately assessed, the Tenant must ensure that:

1.20.1 any person other than the Tenant who contributes to Turnover is subject to the same obligations with respect to Records as are imposed on the Tenant in this Part of the Schedule;

1.20.2 the Landlord has the same rights in respect of any such person(s) as it does in this Part of the Schedule in respect of the Tenant.

49. **Rent reviewed late**[143]

1.21 If, by any Rent Review Date, the reviewed Rent (and therefore the Base Rent) has not been ascertained:

1.21.1 until the new Rent has been ascertained, the Base Rent and Turnover Rent will be calculated and paid by reference to the Rent payable immediately before the Rent Review Date;

1.21.2 following the ascertainment of the Rent, the Landlord will demand the difference (if any) between the amount the Tenant has actually paid and the amount of Base Rent and Turnover Rent that would have been payable had the Rent been ascertained before the Rent Review Date; and

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

50. **Turnover**

1.22 Subject to this paragraph 7 and paragraph 8.1 of this Part of the Schedule, "**Turnover**" means the aggregate of all sums of money or other consideration received or receivable for all goods sold, leased, hired or otherwise disposed of and for all services sold or performed and from all business of any nature whatever conducted at, in front of or on the Premises by the Tenant. It includes:

1.22.1 all amounts received or receivable from the sale of gift cards or vouchers;

1.22.2 all amounts received or receivable from orders that originate or are received or accepted or solicited at or from the Premises even if delivery or performance is made

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[143] This clause is needed where Base Rent is linked to the underlying Rent. It implements a similar regime to the usual uplift of Rent on review.

at or from any place other than the Premises and even if payment is made to a person other than the Tenant;

1.22.3 all amounts received or receivable from mail, telephone, facsimile, internet or similar medium orders received at or lodged at or from the Premises[or collected by the customer from the Premises];

1.22.4 all amounts received or receivable from mail, telephone, facsimile, internet or similar medium orders where the relevant goods or services are satisfied from stock at the Premises or by those at the Premises;

1.22.5 all amounts received or receivable from sales made or services provided by means of electronic, mechanical or vending devices at the Premises;

1.22.6 all amounts received or receivable from sales and services that the Tenant in the normal and customary course of the Tenant's operations would or should credit or attribute to the Tenant's business on the Premises;

1.22.7 all bonuses, commissions, payments or discounts received or receivable from third parties relating to any transactions or services conducted at or from the Premises including those relating to insurance, warranties and the delivery or installation of goods;

1.22.8 [all commissions, rents or licence fees received or receivable from concessionaires, sub-tenants or licensees who trade at or from the Premises;][144]

1.22.9 all amounts received or receivable in respect of delivery, postage or insurance charges in excess of the actual costs of delivery, postage or insurance;

1.22.10 all amounts received or receivable from orders solicited off the Premises by persons operating from or reporting to the Premises;

1.22.11 all grants, subsidies and fees of a revenue nature paid to the Tenant by national or local government or any public authority in consideration of or to defray in whole or part the cost of the supply of goods or services at or from the Premises; and

1.22.12 all other consideration received or receivable by the Tenant in respect of the Premises that, in accordance with standard accounting practices, is credited or attributed to the trade or business of the Tenant carried out at the Premises as income or revenue of the Tenant.

1.23 In calculating the amount of the Turnover:

1.23.1 every sale on credit terms or on an instalment basis will be treated as a sale for the full cash price at the date when it is made irrespective of the time or times at which the Tenant receives payment;

1.23.2 every hiring of goods to a customer with an option to purchase will be treated as a sale of goods for the normal full cash price at the date when the hiring is made (irrespective of the time or times at which the Tenant receives payment) and there will be excluded from the Turnover any hiring charges in respect of that hiring; and

1.23.3 every deposit by a customer will be included in the Turnover at the time of receipt and will only be deducted from the Turnover if and when repaid.

1.24 In calculating the amount of the Turnover, no deduction will be made for:

1.24.1 bad or doubtful debts;

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144 Include this wording where the licence fee or rent paid by any concessionaire, sub-tenant or licensee will be taken into account when calculating the Tenant's turnover. The alternative approach (see paragraph 7.5) is to require the concessionaire's, sub-tenant's or licensee's turnover to be taken into account when calculating the Tenant's turnover.

1.24.2 discounts allowed to employees of the Tenant in respect of goods or services supplied to them by the Tenant; or

1.24.3 in the case of transactions paid by credit card, discounts or commissions payable by the Tenant to the provider of the credit.

1.25 The following amounts will not be included in the Turnover or if included will be deducted:

1.25.1 VAT, purchase tax and similar sales or excise tax imposed directly on the Tenant in respect of the supply of goods or services but only to the extent that such tax is actually paid or accounted for by the Tenant to the taxing authority;

1.25.2 the amount of any cash refund or credit given to a customer when goods are returned so long as the cash refund or credit does not exceed the sale price of the goods included in the Turnover;

1.25.3 the sale price of goods returned by customers for exchange so long as the sale price has been included in the Turnover and the sale price of the goods given in exchange is included in the Turnover;

1.25.4 allowances made in respect of defective or unsatisfactory goods or services so long as those allowances do not exceed the sale price of the goods or the charge for the services included in the Turnover;

1.25.5 the value of the goods transferred whether by way of exchange or otherwise from the Premises to other premises of the Tenant so long as that transfer:

(a) is not made for the purpose of consummating a sale that has been made at in or from the Premises; and

(b) does not deprive the Landlord of the benefit of a sale that would otherwise have been made at in or from the Premises;

1.25.6 the value of goods returned to shippers, wholesalers or manufacturers; and

1.25.7 interest charges and credit account service charges.

1.26 [For the purposes of this paragraph 7, "the Tenant" means the Tenant and any sub-tenant, licensee or concessionaire of the Tenant and any other person in occupation of the Premises.][145]

51. **Substituted Turnover**

1.27 [The Tenant must keep the Premises open for business and to take reasonable steps to maintain active trade during the Estate Opening Hours unless:

1.27.1 the Tenant is prevented from so doing by reason of the destruction of or damage to the Premises or the Estate by an Insured Risk, Uninsured Risk or some other cause wholly beyond the Tenant's control so that the Premises are unfit for occupation and use or inaccessible;

1.27.2 it is necessary to keep the Premises closed for business for any period not exceeding 10 Business Days for carrying out with all due speed any repairs or Permitted Works;

1.27.3 it is necessary to keep the Premises closed for business for any period up to five Business Days for the removal with all due speed of any contents and tenant's and trade fixtures before a permitted assignation [or sub-letting] under this Lease;

1.27.4 the Tenant is carrying out genuine staff training for any period not exceeding [four] hours on not more than [three] occasions during any Turnover Period; or

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145 See footnote 147.

1.27.5 to do so would be contrary to any regulation or requirement of any competent statutory or local authority.][146]

1.28 Subject to paragraph 8.3 of this Part of the Schedule, if the Premises are not open for business on a Normal Shopping Day during the whole of the Estate Opening Hours, then the Turnover for that Normal Shopping Day will be treated as an amount calculated as follows:

$$T=\frac{AT}{NS}$$

where:

T is the Turnover for that Normal Shopping Day;

AT is the actual Turnover generated during the relevant Turnover Period; and

NS is the number of Normal Shopping Days that the Premises were open for business during the relevant Turnover Period.

1.29 The provisions in paragraph 8.2 of this Part of the Schedule will not apply to any Normal Shopping Day where any of the circumstances in paragraphs 8.1.2 to 8.1.4 inclusive of this Part of the Schedule, apply.

52. **Partial periods**

1.30 An On-Account Period and a Turnover Year each means a part of them where the context so requires and the provisions of this Part of the Schedule will apply to any such part, with any necessary changes being made.

1.31 If any other sum is required to be apportioned by reason of paragraph 9.1 or otherwise, it will be treated as if it had accrued from day to day throughout the period to which it relates and will be apportioned in respect of time accordingly.

53. **Resolution of disputes**

1.32 If the Landlord and the Tenant have any dispute as to the amount of the Turnover or the Turnover Rent payable then either the Landlord or the Tenant can require the dispute to be decided by an independent [expert] [arbitrator].

1.33 If the Landlord and the Tenant do not agree on who should decide the relevant dispute, if either party request it, the Landlord and Tenant must make a joint application to the President of the Institute of Chartered Accountants of Scotland to appoint an [expert/arbitrator] to do so. The parties must accept the identity of the nominated [expert/arbitrator] and jointly appoint them to decide the relevant dispute.

1.34 The decision of the [expert] [arbitrator] will be binding on the parties. [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.][147] [The [expert] [arbitrator]:

1.34.1 will invite the Landlord and the Tenant to make submissions to them with any relevant supporting documentation;

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

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

1.34.4 will be paid by the Landlord and the Tenant in such shares and in such manner as the expert may decide (or failing such a decision, in equal shares).]

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[146] Consider whether the Tenant should under an obligation to trade. Note that under paragraph 12 of this Part of the Schedule, if the Tenant does not trade from the Premises, the Landlord has the option of ending the turnover rent provisions and requiring the Tenant to pay the full Rent.

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

54. **Inspection of Records**

1.35 The Landlord may require that an audit of the Records relating to the current Turnover Year or any of the two preceding Turnover Years is carried out by a professionally qualified accountant appointed by the Landlord.

1.36 If, as a result of an audit under paragraph 11.1 of this Part of the Schedule, it is established that the Turnover for any Turnover Year has been understated by more than 2% then the cost of the audit will be borne by the Tenant.

1.37 If any Turnover has been understated, the Landlord will be entitled to issue a further demand for any additional Turnover Rent following the audit and the Tenant must pay the additional Turnover Rent to the Landlord within [10 Business Days] plus interest at the Interest Rate calculated from the date that the Turnover Rent would have been paid had the Turnover Rent not been understated.

55. **End of arrangement**

1.38 Where:

1.38.1 the tenant's right to this Lease is assigned, except for an assignation to an Authorised Group Company;

1.38.2 the Tenant grants a sub-lease of the Premises; or

1.38.3 the Tenant fails to start trading or ceases to trade from the Premises and, in the reasonable opinion of the Landlord, that event is not a temporary cessation of trade arising from a genuine operational requirement of the Tenant

then the arrangements set out in this Part of the Schedule relating to payment of the Base Rent and the Turnover Rent will come to an end and the Rent will be payable with effect from the date the relevant event occurs instead of the Base Rent and the Turnover Rent. The obligation on the Tenant to pay sums due under this Part of the Schedule for the period up to the date of the relevant event will be unaffected.

1.39 Where the total number of days that the Premises are not open for business (or are open for business for less than four hours) on a Normal Shopping Day in any Turnover Year exceeds [*Insert number*], the Landlord may serve notice on the Tenant specifying that arrangements set out in this Part of the Schedule relating to payment of the Base Rent and the Turnover Rent will be treated as having come to an end at the start of the Turnover Year in question and that the Rent will be payable with effect from that date instead of the Base Rent and the Turnover Rent. If the Landlord serves notice under this paragraph 12.2, the Tenant will pay to the Landlord on demand the amount specified in the notice as representing the difference between the Rent that would have been payable up to the date of that notice and the rents actually paid by the Tenant under this Part of the Schedule.

1.40 On an assignation of the tenant's right to this Lease, except for an assignation of the tenant's right to this Lease to an Authorised Group Company:

1.40.1 the Tenant must pay to the Landlord on or before the date of entry under such assignation such amount as the Landlord properly and reasonably estimates to be the maximum amount of Turnover Rent due from the Tenant up to the anticipated date of entry under such assignation taking into account any sums already paid in advance by the Tenant towards the Tenant's liability for Turnover Rent under this Part of the Schedule; and

1.40.2 in the consent to assignation:

(a) the Landlord must undertake to the Tenant to repay to the Tenant any overpayment of Turnover Rent made by the Tenant within [10] Business Days of having received the final Annual Turnover Certificate from the Tenant;

(b) the Tenant must undertake to the Landlord to produce the final Annual Turnover Certificate to the Landlord as soon as reasonably practicable after the date of entry under such assignation and, if any additional Turnover Rent is payable, to pay any excess to the Landlord on demand.

Part 10
Offer Back Provisions

Part A
Terms of the Offer Back

56. **Defined terms**

Parts A and B of Part 10 of the Schedule use the following definitions:

"**Acceptance Period**" means the period of [one month] starting on the date on which the Landlord receives the Tenant's Notice[subject to extension under paragraph 2.6 of this Part of the Schedule];[148]

"**Acceptance Notice**" means any formal notice served by the Landlord on the Tenant accepting the Tenant's offer to renounce this Lease to the Landlord;

"**Completion Date**" means the date [20] Business Days after the date of an Acceptance Notice;

"**Deed**" means a renunciation[149] with the Price, Tenancy Documents and other relevant details inserted where required;

"**Disposal**" means

(a) an assignation of the tenant's right to this Lease; or

(b) the grant of an sub-lease of the whole of the Premises [or a Permitted Part] [or any part of them];[150]

"**Disposal Period**" means the period of [three] months starting on the last day of the Acceptance Period;

["**Independent Expert**" means a chartered surveyor having at least 10 years' experience in valuing premises similar to the Premises, acting as an independent expert;][151]

["**Open Market Value**" means the price at which the Premises may be assigned at arm's length in the open market disregarding the terms of any proposed sub-letting and assuming:

(a) a willing seller and willing buyer;

(b) a reasonable period in which to market the Premises;

(c) that values remain static throughout this period;

(d) that the price does not reflect any value attributable to the Tenant's business carried on at the Premises;

(e) that the price does not reflect any value attributable to tenant's or trade fixtures at the Premises that the Tenant is entitled to remove on quitting the Premises; and

(f) that the Premises are in their actual state of repair and condition at the date of the Tenant's Notice but subject to the terms of this Lease;] [152]

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148 The words in square brackets will be required only where the Tenant has to specify the Open Market Value in the Offer Notice and the Landlord will have the right to require an expert to decide the Open Market Value if there is a dispute.

149 You may wish to consider referring to this being in the form of the standard form renunciation produced by the Property Standardisation Group.

150 Consider whether sub-lettings of part will trigger the offer back provisions. If this Lease does not permit sub-lettings of whole or part, you can delete the whole of paragraph (b) of this Part of the Schedule.

151 This definition is required only where the Tenant has to offer to renounce this Lease at Open Market Value and the Landlord has the right to require that value to be determined by an expert if there is a dispute about that value.

152 This definition is required only where the Tenant has to offer to renounce this Lease to the Landlord at Open Market Value.

"**Price**" means:

(a) in the case of a proposed assignation of the tenant's right to this Lease [the price (excluding VAT) that has been agreed with a proposed assignee for the assignation of the tenant's right to this Lease [or if the Tenant's Notice is served before terms have been agreed with a proposed assignee]] the Open Market Value at the date of the Tenant's Notice; or

(b) in the case of a proposed sub-letting, [£1] [the Open Market Value at the date of the Tenant's Notice];

"**Rejection Notice**" means a formal notice served by the Landlord on the Tenant rejecting the Tenant's offer to renounce this Lease to the Landlord on the terms set out in the Tenant's Notice;

"**Tenancy Documents**" means any agreement for sub-lease, sub-leases, licences and other deeds and documents relating to the Premises; and

"**Tenant's Notice**" means a formal notice that:

(a) contains an unconditional offer to renounce this Lease;

(b) shows the Price at which the Tenant is proposing to renounce this Lease and details of how the Price has been calculated;

(c) [in the case of a proposed assignation of the tenant's right to this Lease provides:

(i) complete and accurate particulars of the proposed assignee and any proposed guarantor;

(ii) the main terms of the transaction including any premium or reverse premium to be paid; and

(iii) the latest published accounts (if any) for the proposed assignee and any proposed guarantor,

but this will not affect the Landlord's right to call for any further information to which the Landlord may be entitled on any subsequent application to assign the tenant's right to this Lease to a proposed assignee;][153]

(d) [in the case of the proposed grant of an sub-lease provides:

(i) full and accurate details of and the latest published accounts (if any) for the sub-tenant and any proposed guarantor;

(ii) the length of the term to be granted;

(iii) the proposed rent (and any proposals for or the existence of any ancillary agreements relating to the rent to be reserved under the sub-lease); and

(iv) the provisions for rent review,

but this will not affect the Landlord's right to call for any further information to which the Landlord may be entitled on any subsequent application to sub-lease the Premises to a proposed sub-tenant;][154]

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153 Paragraph (c) of this Part of the Schedule will not be required if the Tenant must offer to renounce this Lease before agreeing terms with a proposed assignee.

154 Paragraph (d) of this Part of the Schedule will be required only where the grant of a sub-lease will trigger the offer to renounce this Lease and the Tenant must have agreed heads of terms with a proposed sub-tenant before making the offer to renounce this Lease to the Landlord.

(e) specifies the matters (including any sub-leases) to which the renunciation will be subject and the terms of those matters; and

(f) is otherwise in the form contained in Part B of Part 10 of the Schedule.

57. **Offer to renounce**

1.1 Before making any Disposal, the Tenant must serve a Tenant's Notice on the Landlord.

1.2 [No Tenant's Notice may be served unless and until the Tenant has agreed heads of terms for the proposed Disposal with a potential assignee[or sub-tenant, as the case may be].][155]

OR

[The Tenant must serve a Tenant's Notice before marketing Premises or seeking to agree heads of terms for the assignation of the tenant's right to this Lease[or sub-letting of the Premises].][156]

1.3 The Tenant's Notice will constitute an irrevocable offer by the Tenant, which is to remain open for acceptance at any time during the Acceptance Period, to renounce this Lease to the Landlord on the terms set out in the Tenant's Notice[subject to the resolution of any dispute about the Price under paragraph 2.5 of this Part of the Schedule].

1.4 Following the service of a Tenant's Notice, the Tenant must provide the Landlord with any additional information about the Disposal that the Landlord properly and reasonably requires within five Business Days of a request by the Landlord for that information.

1.5 [If there is any dispute about the Price, the matter must be immediately referred to the decision of an Independent Expert who will decide the Open Market Value. If the Landlord and the Tenant do not agree the identity of the Independent Expert, the Independent Expert 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 Independent Expert will:

1.5.1 invite the Landlord and the Tenant to submit to them a proposal for the Price with any relevant supporting documentation;

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

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

1.5.4 be paid by the Landlord and the Tenant in such shares and in such manner as the Independent Expert may decide (or failing such a decision, in equal shares).]

1.6 [If the Landlord notifies the Tenant that there is a dispute about the Price, the Acceptance Period will be extended and will expire 10 Business Days after the Independent Expert gives written notice to the Landlord of their decisions under paragraph 2.5 of this Part of the Schedule. The Price will be the Open Market Value decided by the Independent Expert.][157]

58. **Acceptance Notice**

At any time during the Acceptance Period, the Landlord may serve an Acceptance Notice accepting the Tenant's offer to renounce this Lease. If the Landlord does so:

1.7 the Tenant must renounce and the Landlord must accept the renunciation of this Lease on the Completion Date;

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155 These words should be included only where the Tenant must have agreed heads of terms for an assignation of the tenant's right to this Lease or sub-letting before offering to renounce this Lease to the Landlord.

156 These words should be included only where the Tenant must make an offer to renounce this Lease before marketing the Premises in the open market.

157 Paragraphs 2.5 and 2.6 of this Part of the Schedule will be required only where the Tenant has to offer to renounce this Lease at Open Market Value and the Landlord can require that value to be determined by an Independent Expert.

1.8 the terms set out in paragraph 6 of this Part of the Schedule will apply.

59. **Failure to accept renunciation**

1.9 The provisions of paragraph 4.2 of this Part of the Schedule will apply if:

1.9.1 the Landlord does not serve an Acceptance Notice on the Tenant during the Acceptance Period; or

1.9.2 the Landlord serves a Rejection Notice on the Tenant.

1.10 Subject to paragraph 4.1 of this Part of the Schedule, during the Disposal Period the Tenant may, subject to obtaining the consent of the Landlord on the terms set out in this Lease, enter into the Disposal on the terms set out in the Tenant's Notice.

60. **Time of the essence**

Time is of the essence for the service of any notice under this Part A of Part 10 of the Schedule.

61. **Terms of the renunciation**

1.11 The renunciation will be made subject to and with the benefit of the Tenancy Documents.

1.12 The Landlord must not raise any requisition or objection to the title except in respect of any matters registered against the Tenant's title to this Lease after the date of this Lease or against the name of the Tenant in the Charges Register.

1.13 The Tenant must renounce this Lease with full warrandice.

1.14 Until the renunciation is completed all the terms and conditions of this Lease will remain in full force and effect including the provisions relating to the payment by the Tenant of the rent and all other sums payable under this Lease.

1.15 On completion of the renunciation Clause 5.4 will apply.

1.16 Completion of the renunciation will not prejudice the rights of the Landlord in respect of any arrears of the Rents [or any breach of the tenant's repairing obligations under this Lease] but will otherwise release the Landlord and the Tenant from all past, present and future obligations under this Lease.

Part B
Form of Tenant's Notice

To:	[*Insert name of Landlord*] (the "Landlord") of [*Insert address of Landlord*]
From:	[*Insert name of Tenant*] (the "Tenant") of [*Insert address of Tenant*]
Lease:	A [lease] [sub-lease] of the Premises entered into between *[Insert original parties to Lease]* dated *[Insert date of Lease]* [and registered in the Books of Council and Session on [*Insert registration date*]]
Premises:	[*Insert address of Premises*]
Disposal:	A disposal the Premises on the terms set out in the Schedule to this notice
Price:	[*Insert amount in figures*]
Date:	[*Insert date*]

62. This notice is served on you under Part A of Part 10 of the Schedule to the Lease.

1. We [have agreed terms for] [intend to agree terms for] the Disposal.

2. This notice constitutes an irrevocable offer by us to renounce this Lease to you for the Price.

3. The Price is [the price that the proposed assignee referred to in the Schedule to this notice has agreed to pay for an assignation of the tenant's right to the Lease] [our estimate of the Open Market Value of the Premises (as defined in the Lease) subject to any determination of that Price pursuant to paragraph 2.5 of Part A of Part 10 of the Schedule to the Lease] [the agreed sum of £1 to be paid on a renunciation of the Lease if we propose to sub-let the Premises].

4. This offer remains open for acceptance by you during the Acceptance Period defined in Part A of Part 10 of the Schedule to the Lease.

5. This offer incorporates the terms set out in Part A of Part 10 of the Schedule to the Lease.

Please sign and return one copy of this notice indicating whether you wish to accept or reject the offer to renounce the Lease on the terms set out in this notice.

Signed: _____

For and on behalf of the Tenant

THIS IS THE SCHEDULE REFERRED TO IN THE FOREGOING NOTICE BY
[*Insert name of Tenant*] TO [*Insert name of Landlord*]

THE PROPOSED DEALING

[An assignation of the tenant's right to the Lease at a premium of [not less than] [*Insert amount in figures*] to [*Insert name of assignee*][with the obligations of the assignee to be guaranteed by [*Insert name of guarantor*]].]

OR

[A sub-lease of the [whole] [part] of the Premises at an initial rent of [*Insert amount in figures*] per annum [subject to review] on the following terms:

Sub-tenant:	[Insert name of proposed sub-tenant][158]
Sub-tenant's Guarantor:	[Insert name of proposed guarantor][159]
Contractual Term of the Sub-Lease:	[*Insert number*] years from and including [*Insert date*]
Rent free period:	[Insert number] months
Other terms:	[Insert details]
Any variations to the Lease to be included in the Sub-Lease:	[Insert details]]

Signed: _____

For and on behalf of the Tenant

We, [accept] [reject] the offer to renounce the Lease to us at the Price contained in this notice [or otherwise decided pursuant to paragraph 2.5 of Part A of Part 10 of the Schedule to the Lease].

Signed: _____

For and on behalf of the Landlord

Dated: _____

158 For use where the offer-back is to be made after terms have been agreed for a sub-letting.

159 For use where the offer-back is to be made after terms have been agreed for a sub-letting.

Part 11
Plans[160]

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