

**NEC4**

## **Term Maintenance Contract**

### **Annex 12 – Draft license to carry out works**

**DN581359**

**Commercial and Procurement Team**

Somerset County Council

County Hall

Taunton

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**DATED**

**2016**

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**DRAFT LICENCE TO CARRY OUT WORKS**

relating to

**[DESCRIPTION OF PROPERTY]**

between

**SOMERSET COUNTY COUNCIL**

and

**[PARTY 2]**

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This licence is dated

**HM Land Registry**

**Landlord's title number:**

**Administrative area:**

**Tenant's title number:**

**Administrative area:**

**PARTIES**

- (1) SOMERSET COUNTY COUNCIL of County Hall Taunton Somerset TA1 4DY  
(**Landlord**).
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Tenant**).

**BACKGROUND**

- (A) This licence is supplemental and collateral to the Lease.
- (B) The Landlord is entitled to the immediate reversion to the Lease.
- (C) The residue of the Term is vested in the Tenant.
- (D) The Tenant intends to carry out the Works and, under the terms of the Lease, requires the consent of the Landlord to do so.
- (E) Once the Works have been carried out they will form part of the Property and shall be returned to the Landlord at the end of the term of the Lease in accordance with clause 29 of the Lease unless notice is given by the Landlord to the Tenant in accordance with clause 9 of this licence.

**AGREED TERMS**

**1. INTERPRETATION**

The following definitions and rules of interpretation apply in this licence.

**1.1 Definitions:**

**CDM Regulations:** the Construction (Design and Management) Regulations 2015 (*SI 2015/51*).

**[Energy Performance Certificate:** a certificate as defined in regulation 2(1) of the Energy Performance of Buildings (England and Wales) Regulations 2012 (*SI 2012/3118*).]

**Lease:** a lease of [ADDRESS/DESCRIPTION OF THE PROPERTY] dated [DATE] and made between [PARTIES] and all documents supplemental or collateral to that lease.

**Property:** [ADDRESS/DESCRIPTION OF THE PROPERTY] as [more particularly described in and] demised by the Lease.

**[Recommendation Report:** a report as defined in regulation 4 of the Energy Performance of Buildings (England and Wales) Regulations 2012 (*SI 2012/3118*).]

**Term:** the term of years granted by the Lease.

**Works:** the works to be carried out at the Property which are referred to in the Schedule together with making good any damage to the Property caused by carrying out such works.

- 1.2 References to the **Landlord** include a reference to the person entitled for the time being to the immediate reversion to the Lease. References to the **Tenant** include a reference to its successors in title and assigns.
- 1.3 References to the **end of the Term** are to the end of the Term however it ends.
- 1.4 The expression **tenant covenants** has the meaning given to it by the Landlord and Tenant (Covenants) Act 1995.
- 1.5 Clause, Schedule and paragraph headings shall not affect the interpretation of this licence.
- 1.6 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.7 The Schedules form part of this licence and shall have effect as if set out in full in the body of this licence. Any reference to this licence includes the Schedules.
- 1.8 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.9 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.10 Unless otherwise specified, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.11 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

- 1.12 A reference to **writing** or **written** includes fax but not e-mail.
- 1.13 A reference to this licence or to any other agreement or document referred to in this licence is a reference to this licence or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this licence) from time to time.
- 1.14 Unless the context otherwise requires, references to clauses and Schedules are to the clauses and Schedules of this licence and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.15 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.16 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

## **2. CONSENT TO CARRY OUT THE WORKS**

- 2.1 In consideration of the obligations on the Tenant in this licence, the Landlord consents to the Tenant carrying out the Works on the terms set out in this licence [and applying for planning permission to carry out the Works].
- 2.2 This consent will cease to be valid if the Works have not been started (in accordance with the terms of this licence) within [six] months from (and including) the date of this licence, unless the Landlord gives the Tenant notice extending the period of validity. If the Landlord does agree to an extension, then this consent will remain valid for the period stated in that notice and the time period stated in clause 4.7(a) will be extended by the same amount. If this consent ceases to be valid and the Landlord has not given notice extending its validity, all the terms of this licence except clause 2.1 will remain in force.
- 2.3 Nothing in this licence will place the Tenant under an obligation to the Landlord to carry out the Works, but if it does carry them out, it must do so on the terms of this licence.
- 2.4 This consent does not obviate the need for the consent of any person other than the Landlord that may be required to carry out the Works.

### **3. STARTING THE WORKS**

- 3.1 The Tenant must not start the Works until it has complied with the requirements of this clause and of clause 5.1.
- 3.2 The Tenant must obtain all licences and consents that are required for the Works under all laws and by the owner or occupier of any neighbouring land or otherwise.
- 3.3 The Tenant must provide details of the Works to the insurers of the Property and obtain their consent to carrying out the Works.
- 3.4 The Tenant must produce all such licences and consents to the Landlord and obtain the Landlord's confirmation they are satisfactory to the Landlord.
- 3.5 The Tenant must give the Landlord copies of the plans and specification for the Works.
- 3.6 The Tenant must notify the Landlord and the insurers of the Property of the date it intends to start carrying out the Works.

### **4. CARRYING OUT AND COMPLETING THE WORKS**

- 4.1 The Tenant must carry out the Works:
  - (a) using good quality, new materials which are fit for the purpose for which they will be used;
  - (b) in a good and workmanlike manner and in accordance with good building and other relevant practices, codes and guidance; and
  - (c) to the reasonable satisfaction of the Landlord.
- 4.2 In carrying out the Works the Tenant must comply with all laws and the terms of all other licences and consents, the requirements and recommendations of all relevant utility suppliers and those of the insurers of the Property.
- 4.3 The Tenant must take all proper steps to ensure that carrying out the Works does not make any of the following unsafe: the structure of [the Property] [the building of which the Property forms part], any plant or machinery at the [Property] [building of which the Property forms part], any neighbouring land or building.
- 4.4 The Tenant must cause as little disturbance and inconvenience as [reasonably] possible to the Landlord and the owners and occupiers of the [building **OR** estate] of which the Property forms part and] of any neighbouring land. The Tenant must not

infringe any of their rights nor the rights of any other person in relation to the Property.

- 4.5 The Tenant must immediately make good, to the reasonable satisfaction of the Landlord, any damage (including decorative damage) to any land or building or any plant and machinery (other than the Property) which is caused by carrying out the Works.
- 4.6 The Tenant must allow the Landlord and its surveyors access to the Property, both while the Works are being carried out and afterwards, and will give the Landlord the information it reasonably requests to establish that the Works are being and have been carried out in accordance with this licence.
- 4.7 The Tenant must:
- (a) complete the Works within [twelve] months after the date of this licence; and
  - (b) notify the Landlord as soon as the Works have been completed, and send the Landlord [NUMBER] copies of plans showing the Property as altered by the Works.
- 4.8 [The Tenant shall provide the Landlord with a copy of any Energy Performance Certificate and Recommendation Report issued as a result of the Works within [one month] of such documents being issued.]

## **5. THE CDM REGULATIONS**

- 5.1 By entering into this licence, the Tenant and the Landlord agree that, to the extent that the Landlord may be a client for the purposes of the CDM Regulations, the Tenant is to be treated as the only client in respect of the Works for the purposes of the CDM Regulations.
- 5.2 The Tenant must comply with its obligations as a client for the purposes of the CDM Regulations and must ensure that the principal designer and the principal contractor that it appoints in relation to the Works comply with their respective obligations under the CDM Regulations, including preparing and maintaining the health and safety file for the Works.
- 5.3 The Tenant must ensure that all relevant documents relating to the Works are placed in the health and safety file for the Property by the principal designer or principal contractor in accordance with the CDM Regulations and otherwise comply with its obligations in the Lease relating to those documents and the file.



## **6. ADDITIONAL WORKS**

- 6.1 If the terms of any planning permission, licence or consent (other than this licence) obtained for the Works, require any other works to be carried out (whether to the Property or to any other land or building) the Tenant must carry out such other works within any time limit imposed by such permission, licence or consent and in any event before the end of the Term.
- 6.2 The terms of this licence, other than clause 2 and clause 4.7(a) will apply to the carrying out of such other works as if they formed part of the Works.
- 6.3 This clause is without prejudice to any requirement on the Tenant to obtain the consent of the Landlord to such other works pursuant to the Lease and the consent of any other person that may be required for such other works.

## **7. INSURANCE OF THE WORKS**

- 7.1 The Landlord will only be obliged to insure the Works if they form part of the Property, and only:
- (a) after they have been completed in accordance with this licence;
  - (b) for the amount for which the Tenant has notified the Landlord that they should be insured; and
  - (c) otherwise in accordance with the terms of the Lease.
- 7.2 Until the Landlord is obliged to insure the Works they will be at the sole risk of the Tenant.
- 7.3 The Tenant must pay on demand any increase in the insurance premium and the amount of any additional insurance premium for the Property or any neighbouring land of the Landlord or the [building **OR** estate] of which the Property forms part that arises because of the Works.

## **8. FEES, RATES AND TAXES**

The Tenant must pay all fees, rates, levies and taxes that arise by reason of the Works (including any arising under any laws applying to the Works) whether imposed on the Landlord or the Tenant and must indemnify the Landlord from all liability in relation to such fees, rates, levies and taxes.

## **9. REINSTATEMENT**

- 9.1 The Landlord may give notice to the Tenant within six months before the end of the Term or within three months after the end of the Term, requiring the Tenant to

remove the Works and reinstate the Property. The notice may require removal and reinstatement in respect of part only of the Works.

- 9.2 If the Landlord gives the Tenant this notice, the Tenant must remove the Works (or the part specified) and reinstate the Property before the end of the Term. But if the notice is given less than [three] months before the end of the Term or after the end of the Term the removal and reinstatement must be done within three months after the notice is given.
- 9.3 The removal and reinstatement must be done at the Tenant's cost and to the reasonable satisfaction of the Landlord.
- 9.4 The terms of this licence, other than clause 2 and clause 4.7(a) will apply to such removal and reinstatement.
- 9.5 The Tenant must also make good any damage (including decorative damage) to the Property caused by the removal and reinstatement.

## **10. THE LEASE COVENANTS AND CONDITIONS**

The tenant covenants in the Lease will extend to the Works and apply to the Property as altered by the Works.

## **11. NO WARRANTY BY THE LANDLORD**

- 11.1 No representation or warranty is given or is to be implied by the Landlord entering into this licence or by any step taken by or on behalf of the Landlord, in connection with it as to:
- (a) the suitability of the Property [or the building of which it forms part] for the Works; or
  - (b) whether the Works or any removal or reinstatement of them may be lawfully carried out.
- 11.2 The Tenant acknowledges that it does not rely on, and will have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that may have been made by or on behalf of the Landlord before the date of this licence as to any of the matters mentioned in clause 11.1.
- 11.3 Nothing in this clause shall limit or exclude any liability for fraud.

## **12. COSTS**

- 12.1 On completion of this licence the Tenant must pay the reasonable costs and disbursements of the Landlord, its solicitors, surveyors [managing agents] [and insurers] in connection with this licence.
- 12.2 The Tenant must pay on demand any further reasonable costs and disbursements of the Landlord, its solicitors, surveyors and insurers incurred in connection with the Works or any removal of them and reinstatement of the Property or in making good any damage to any land or building, plant or machinery (other than the Property) which is caused by the carrying out of the Works or by the removal of them or the reinstatement of the Property.
- 12.3 The obligations in this clause extend to costs and disbursements assessed on a full indemnity basis and to any value added tax in respect of those costs and disbursements except to the extent that the Landlord is able to recover that value added tax.

## **13. THE RIGHT OF RE-ENTRY IN THE LEASE**

The right of re-entry in the Lease will be exercisable if any covenant or condition of this licence is breached, as well as if any of the events stated in the provision for re-entry in the Lease occurs.

## **14. INDEMNITY**

The Tenant shall indemnify the Landlord against all liabilities, costs, expenses, damages and losses suffered or incurred by the Landlord arising out of or in connection with any breach of the terms of this licence.

## **15. NOTICES**

Any notice given under or in connection with this licence must be in writing and must be delivered by hand or sent by pre-paid first class post or other next working day delivery service or by any other means permitted by the Lease. A correctly addressed notice delivered by hand shall be deemed to have been delivered at the time the notice is left at the proper address. A correctly addressed notice sent by pre-paid first class post or other next working day delivery service will be deemed to have been delivered on the [second] working day after posting.

## **16. LIABILITY**

- 16.1 The obligations of the Tenant in this licence are owed to the Landlord and are made in consideration of the consent granted by clause 2.1.

- 16.2 Where the Tenant comprises more than one person, those persons shall be jointly and severally liable for the obligations and liabilities of the Tenant arising under this licence. The Landlord may take action against, or release or compromise the liability of, or grant time or other indulgence to, any one of those persons, without affecting the liability of any other of those persons.

**17. THIRD PARTY RIGHTS**

A person who is not a party to this licence shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this licence.

**18. GOVERNING LAW**

This licence and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

**19. JURISDICTION**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this licence or its subject matter or formation (including non-contractual disputes or claims).

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

**Schedule      Details of the Works**

[DESCRIPTION OF THE WORKS] as such works are shown on the plans and specification annexed to this licence and initialled on behalf of the Landlord and Tenant for the purposes of identification.

Executed as a deed by [NAME OF LANDLORD] acting by [NAME OF FIRST DIRECTOR], a director and [NAME OF SECOND DIRECTOR OR SECRETARY], [a director **OR** its secretary]

.....  
[SIGNATURE OF FIRST DIRECTOR]  
Director

.....  
[SIGNATURE OF SECOND DIRECTOR OR SECRETARY]  
[Director **OR** Secretary]

**OR**

Executed as a deed by [NAME OF LANDLORD] acting by [NAME OF DIRECTOR], a director, in the presence of:

.....  
[SIGNATURE OF DIRECTOR]  
Director

.....  
[SIGNATURE OF WITNESS]  
[NAME, ADDRESS [AND OCCUPATION] OF WITNESS]

Executed as a deed by [NAME OF TENANT] acting by [NAME OF FIRST DIRECTOR], a director and [NAME OF SECOND DIRECTOR OR SECRETARY], [a director **OR** its secretary]

.....  
[SIGNATURE OF FIRST DIRECTOR]  
Director

.....  
[SIGNATURE OF SECOND DIRECTOR OR SECRETARY]  
[Director **OR** Secretary]

**OR**

Executed as a deed by [NAME OF TENANT] acting by [NAME OF DIRECTOR], a director, in the presence of:

.....  
[SIGNATURE OF DIRECTOR]  
Director

.....  
[SIGNATURE OF WITNESS]  
[NAME, ADDRESS [AND OCCUPATION] OF WITNESS]

Executed as a deed by [NAME OF TENANT'S GUARANTOR] acting by [NAME OF FIRST DIRECTOR] and [NAME OF SECOND DIRECTOR/SECRETARY]

.....  
Director

.....  
Director/Secretary

**OR**

Signed as a deed by [NAME OF  
TENANT'S GUARANTOR]

in the presence of [NAME OF  
WITNESS]

.....  
[SIGNATURE OF TENANT'S  
GUARANTOR]

.....  
[SIGNATURE OF WITNESS]

.....  
[NAME OF WITNESS]

.....  
.....  
[ADDRESS OF WITNESS]

Signed as a deed by [NAME OF  
TENANT'S GUARANTOR]

in the presence of [NAME OF  
WITNESS]

.....  
[SIGNATURE OF TENANT'S  
GUARANTOR]

.....  
[SIGNATURE OF WITNESS]

.....  
[NAME OF WITNESS]

.....  
.....  
[ADDRESS OF WITNESS]

**Annex      AGREED PLANS AND SPECIFICATION FOR WORKS TO BE  
CARRIED OUT AT [DESCRIPTION OF THE PROPERTY]**

**Date:**

**Landlord:**    [NAME OF LANDLORD]    (initialled) .....

**Tenant:**    [NAME OF TENANT]    (initialled) .....

**Lease:**    [DESCRIPTION OF LEASE]