**LICENCE TO OCCUPY**

Where a new mutual is to make use of property belonging to the Local Authority, the latter may transfer the freehold under the Transfer Agreement, or may allow the mutual to occupy the property under a lease or a licence.

This suite of template documents assumes that the Local Authority will provide two properties for use by the mutual, one under a Lease and the other under a Licence to Occupy. The decision on whether a Lease or Licence to Occupy is appropriate needs to be considered on a case-by-case basis with legal advice.

This document is a template Licence to Occupy to be granted by the Local Authority to the mutual. This form of agreement is only appropriate where the mutual will not have exclusive possession of the property.

It contains the necessary provisions to protect both owner (Local Authority) and occupier (mutual organisation).

This template has been prepared to provide general guidance and information to organisations considering or undertaking mutualisation. It is intended to be a starting pointonly and should not be considered a finalised legal document or as constituting legal advice. It is the responsibility of your organisation to seek legal advice and to ensure that the document is reviewed and signed off by your legal team.

The template contains a breakdown of drafting assumptions which highlight areas where additional drafting and legal advice may be required. Additional drafting is not limited to these areas and you should seek further legal guidance where you deem necessary.

Whilst we have endeavoured to ensure that the information in the template is correct, no warranty, express or implied, is given as to the templates accuracy, timeliness, completeness or fitness for a particular purpose and we do not accept any liability for errors or omissions. Neither the Department for Digital, Culture, Media and Sport, nor Bates Wells Braithwaite shall be liable to you or anyone else for any decisions made or action taken in reliance on this document, or for any damage arising from its use.

 DRAFTING ASSUMPTIONS

In preparing this Licence to Occupy we have made a number of assumptions regarding the circumstances within which this Licence will be used and these are set out in detail below.

Please note a Licence to Occupy is only appropriate where the occupier will not have exclusive possession. Advice should be obtained as to whether a Licence is appropriate as otherwise there is a risk of granting an occupier security of tenure.

Please be aware that where the circumstances between the Council and the Mutual differ from our Assumptions this agreement may not be appropriate for use in its current form and additional drafting may be required. In such circumstances the parties should seek additional legal advice.

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| **Category** | **Assumption** | **Additional Drafting** |
| BREAK OPTIONS | As regards early termination, we have assumed that any break will be linked to the term of the Services Agreement, but with an option for an earlier break from the Tenant only. | The periods of notice may be changed as you require. If the Mutual is entering into a Funding Agreement instead of a Services Agreement, the references will need to be changed to “Funding Agreement” with a new definition inserted. |
| DESIGNATED HOURS | We have included a provision allowing the Licensee’s use to be only during certain times on certain days if needed. | As a Licence can only be used if the Licensee does not have exclusive possession, specifying particular hours of use may be important. |
| GENERAL TERMS | Other terms will be on a standard Licence to Occupy. Notice will need to be served in each case and where the Services Agreement ends we have assumed the Mutual will need three months to move out of the Property. |  |
| LICENCE FEE/ PAYMENTS | We have assumed a licence fee will be payable and included allowance for a Facilities Charge. We have included a review option. | The definition of Facilities Charge can be adapted to reflect items agreed as chargeable. Alternatively, the provision can be deleted. A review option has been included. An alternative option would be to have an RPI increase. |
| LICENSOR | The Council owns the freehold to the Premises (ie. it is not occupying under a lease). | If the Council occupies under a lease, consent may be needed to the grant of the licence and provisions may need to be added requiring the licensee not to act in breach of the terms of the Council’s Lease. |
| PERMITTED USE | The use is limited to the provision of services by the Mutual. |  |

**DATED 20[ ]**

**LICENCE TO OCCUPY**

**relating to [INSERT NAME OF PROPERTY]**

**[THE COUNCIL]**

**and**

**[THE MUTUAL]**

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**THIS LICENCE** is made on 20[ ]

**Parties**

1. [**LOCAL AUTHORITY**] of [Address] (**Licenso**r); and
2. [**MUTUAL**] of [Address] (Company Number: [ ]) (**Licensee**).

**Agreed terms**

1. **Interpretation**

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

* 1. Definitions:

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| **“Act of Insolvency”** | means any of the following:* + - 1. the taking of any step in connection with any voluntary arrangement or any other compromise or arrangement for the benefit of any creditors of the Licensee;
			2. the making of an application for an administration order or the making of an administration order in relation to the Licensee;
			3. the giving of any notice of intention to appoint an administrator, or the filing at court of the prescribed documents in connection with the appointment of an administrator, or the appointment of an administrator, in relation to the Licensee;
			4. the appointment of a receiver or manager or an administrative receiver in relation to any property or income of the Licensee;
			5. the commencement of a voluntary winding-up in respect of the Licensee, except a winding-up for the purpose of amalgamation or reconstruction of a solvent company in respect of which a statutory declaration of solvency has been filed with the Registrar of Companies;
			6. the making of a petition for a winding-up order or a winding-up order in respect of the Licensee;
			7. the striking-off of the Licensee from the Register of Companies or the making of an application for the Licensee to be struck-off;
			8. the Licensee otherwise ceasing to exist; or
			9. the presentation of a petition for a bankruptcy order or the making of a bankruptcy order against the Licensee.

The paragraphs above shall apply in relation to a partnership or limited partnership (as defined in the Partnership Act 1890 and the Limited Partnerships Act 1907 respectively) subject to the modifications referred to in the Insolvent Partnerships Order 1994 (SI 1994/2421) (as amended), and a limited liability partnership (as defined in the Limited Liability Partnerships Act 2000) subject to the modifications referred to in the Limited Liability Partnerships Regulations 2001 (SI 2001/1090) (as amended).Act of Insolvency includes any analogous proceedings or events that may be taken pursuant to the legislation of another jurisdiction in relation to a licensee incorporated or domiciled in such relevant jurisdiction. |
| **"Building"** | means the building known as [INSERT ADDRESS OF BUILDING] (including the car parks, the landscaped areas and service areas within the curtilage thereof) which is shown edged with a [COLOUR] line on the Plan. |
| **"Common Parts"** | means the service yards, forecourts, landscaped areas, pedestrian walkways, accessways, entrance halls, corridors, landings, lobbies, lifts, lift shafts, stairwells, staircases, loading bays, refuse facilities and fire escapes within the Building and all other areas or parts of the Building and amenities within the Building which from time to time are provided by the Licensor for common use and enjoyment by the tenants and occupiers of the Building and all persons expressly or by implication authorised by them. |
| **"Competent Authority"** | means any statutory undertaker or any statutory, public, local or other authority or regulatory body or any court of law or government department or any of them or any of their duly authorised officers. |
| **"Designated Hours"** | means [the hours of [TIME] to [TIME] on [DAY] to [DAY] (inclusive) of every week (except bank and public holidays) or such other hours or days as the Licensor in its discretion (acting reasonably) may determine on four weeks' notice to the Licensee. |
| **“Facilities Charge”** | means a fair and reasonable proportion of the costs of all telephone and other telecommunication charges levied in respect of such services used by the Licensee at the Premises together with charges levied in respect of any other facilities as may be agreed by the parties to be provided by the Licensor from time to time during the Licence Period. |
| **"Licence Fee"** | means the amount of £[1] per annum then as reviewed pursuant to clause 3 and which shall cover fees for the maintenance, repair and decoration of the Common Parts by the Licensor together with rates and utilities supplied during the Designated Hours but which for the avoidance of doubt shall exclude the Facilities Charge. |
| **"Licence Fee Commencement Date"** | means [ ]. |
| **“Licence Fee Review Date”** | means [ ] in each year. |
| **"Licence Period"** | means the period from and including [ ] until the date on which this Licence is determined in accordance with clause 5 or clause 6. |
| **“Meeting Rooms”** | means the meeting rooms shown edged green on the Plan, as may be changed by the Licensor from time to time. |
| **"Necessary Consents"** | means all planning permissions and all other consents, licences, permissions, certificates, authorisations and approvals whether of a public or private nature which shall be required by any Competent Authority for the Permitted Use. |
| **"Permitted Use"** | means for the Provisions of Services as defined in the Services Contract. |
| **“Plan”** | means the plan annexed to this Licence and marked “Plan”. |
| **"Service Media"** | means all media for the supply or removal of heat, electricity, gas, water, sewage, air-conditioning, energy, telecommunications, data and all other services and utilities and all structures, machinery and equipment ancillary to those media. |
| **“Services Agreement”** | means the agreement made between [insert Council] and [Insert Mutual] dated [date] for the provision and operation of [ ] services. |
| **“Premises”** | means the area from time to time allocated by the Licensor within the Building [shown edged [COLOUR] on the Plan **OR** such Premises as the Licensor may in its sole discretion from time to time allot to the Licensee without notice. |
| **"VAT"** | means value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax. |

* 1. Clause, Schedule and paragraph headings shall not affect the interpretation of this Licence.
	2. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
	3. The Schedule forms 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 Schedule.
	4. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
	5. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
	6. A reference to laws in general is a reference to all local, national and directly applicable supra-national laws as amended, extended or re-enacted from time to time and shall include all subordinate laws made from time to time under them and all orders, notices, codes of practice and guidance made under them.
	7. 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 and shall include all subordinate legislation made from time to time under that statute or statutory provision and all orders, notices, codes of practice and guidance made under it.
	8. A reference to **writing** or **written** excludes fax and email.
	9. Any obligation on a party not to do something includes an obligation not to allow that thing to be done and an obligation to use all reasonable endeavours to prevent that thing being done by another person.
	10. 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.
	11. 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.
	12. Unless expressly provided otherwise, the obligations and liabilities of the Licensor the Licensee under this Licence are joint and several.
	13. A **working day** is any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.
1. **Licence to occupy**
	1. Subject to clause 4 and clause 6, the Licensor permits the Licensee to occupy the Premises for the Permitted Use for the Licence Period during the Designated Hours in common with the Licensor and all others authorised by the Licensor (so far as is not inconsistent with the rights given to the Licensee to use the Premises for the Permitted Use) and in relation to its invitees, by appointment only, but not the general public, together with the rights mentioned in the Schedule 1.
	2. The Licensee acknowledges that:
		1. the Licensee shall occupy the Premises as a licensee and that no relationship of landlord and tenant is created between the Licensor and the Licensee by this Licence;
		2. the Licensor retains control, possession and management of the Premises and the Licensee has no right to exclude the Licensor from the Premises;
		3. the licence to occupy granted by this Licence is personal to the Licensee and is not assignable and the rights given in clause 2 may only be exercised by the Licensee and its employees; and
		4. without prejudice to its rights under clause 5, the Licensor shall be entitled at any time on giving not less than seven days’ notice to require the Licensee to transfer to alternative Premises elsewhere within the Licensor’s Property and the Licensee shall comply with such requirement.
2. **Review of Licence Fee**
	1. On each Licence Fee Review Date the Licensor may increase the Licence Fee by such amount as it may determine acting in its absolute discretion.
	2. The Licensor will give the Licensee not less than three months’ notice of any increase in the Licence Fee.
3. **Licensee's obligations**
	1. The Licensee agrees and undertakes:
		1. to pay on the date hereof to the Licensor a sum in respect of the Licence Fee for the period from the Licence Fee Commencement Date up to the immediately following quarter day, all such payments to be exclusive of VAT;
		2. to thereafter pay to the Licensor the Licence Fee quarterly in advance on the usual quarter days such payment to be made by direct debit without any deduction or set off and proportionately for any period of less than a quarter all such payments to be exclusive of VAT;
		3. to pay by direct debit the Facilities Charge on the 1st day of each month;
		4. to keep the Premises clean, tidy and clear of rubbish and to hand it back to the Licensor at the end of the Licence Period in a clean and tidy condition having first made good all damage caused to the Premises and the Licensor’s own equipment, goods and chattels by the Licensee or by any visitors, contractors or other third parties that the Licensee allows to access the Premises;
		5. not to use the Premises other than for the Permitted Use;
		6. not to make any alteration or addition whatsoever to the Premises;
		7. not to display any advertisement, signboards, nameplate, inscription, flag, banner, placard, poster, signs or notices at the Premises or elsewhere in the Licensor’s Property or the Building without the prior written consent of the Licensor;
		8. not to do or permit to be done in the Premises anything which is illegal or which may be or become a nuisance (whether actionable or not), annoyance, inconvenience or disturbance to the Licensor or to occupiers of the Building or any owner or occupier of neighbouring property;
		9. not to cause or permit to be caused any damage to:
			1. the Premises, the Building or any neighbouring property; or
			2. any property of the owners or occupiers of the Premises, the Building or any neighbouring property;
		10. not to obstruct the Common Parts, make them dirty or untidy or leave any rubbish on them;
		11. not to apply for any planning permission in respect of the Premises;
		12. not to do anything that will or might constitute a breach of any Necessary Consents affecting the Premises or which will or might vitiate in whole or in part any insurance effected by the Licensor in respect of the Premises and the Building from time to time;
		13. to comply with all laws and with any recommendations of the relevant suppliers relating to the supply and removal of electricity, gas, water, sewage, telecommunications and data and other services and utilities to or from the Premises;
		14. to observe any reasonable and proper rules and regulations the Licensor makes and notifies to the Licensee from time to time governing the Licensee's use of the Premises and the Common Parts including those contained at Schedule 2 of this Licence;
		15. to leave the Premises in a clean and tidy condition and to remove the Licensee's furniture equipment and goods from the Premises at the end of the Licence Period;
		16. not to pollute the Premises or any of the conducting media serving the same and not to cause the Premises to become contaminated;
		17. not to use the Premises for any activity which is dangerous, noisy or offensive;
		18. to maintain adequate insurance of all equipment that the Licensee brings into the Premises;
		19. not to bring anything into the Premises that would overload or strain the structure or the electricity installations of the Building;
		20. to indemnify the Licensor and keep the Licensor indemnified against all losses, claims, demands, actions, proceedings, damages, costs, expenses or other liability in any way arising from any breach by the Licensee of any undertaking or term of this Licence; and
		21. to pay to the Licensor interest on the Licence Fee or other payments at the rate of two per cent per annum above the base rate of such bank as the Licensor shall designate from time to time calculated on a daily basis from the due date until payment if the Licensee shall fail to pay the Licence Fee or any other payments due under this Licence on its due date (whether formally demanded or not).
4. **Breach of Undertaking**

The Licensor shall be entitled immediately (on giving written notice to the Licensee) to withdraw all or any of the rights set out in clause 2:

* 1. should the Licensee fail to perform any of its undertakings set out in clause 4; or
	2. an Act of Insolvency occurs.
1. **Termination**
	1. This Licence shall end on the earliest of:
		1. [DATE ON WHICH LICENCE TO END];
		2. the expiry of any notice given by the Licensor to the Licensee at any time on breach of any of the Licensee's obligations contained in clause 4;
		3. the expiry of not less than three months’ prior written notice given by the Licensee to the Licensor if the Services Agreement ends for whatever reason; and
		4. the expiry of not less than three months’ prior written notice given by the Licensee to the Licensor.
	2. In the event that the Licensee terminates this Licence, termination will be subject to all payments having been made by the Licensee to the Licensor up to the end of the Licence Period.
	3. At the end of the Licence Period the Licensee shall vacate the Premises and remove all of its belongings from the Premises and the Building and otherwise leave the Premises, the Licensor’s Property and the Building in accordance with its obligations under this Licence.
	4. Termination of this Licence shall not affect the rights of either party in connection with any breach of any obligation under this Licence which existed at or before the date of termination.
2. **Notices**
	1. Any notice given under this Licence shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or other next working day delivery service to the relevant party as follows:
		1. to the Licensor at: [ADDRESS] and marked for the attention of [NAME **OR** POSITION]; and
		2. to the Licensee at: [ADDRESS] and marked for the attention of [NAME **OR** POSITION], or as otherwise specified by the relevant party by notice in writing to the other party.
	2. Any notice given in accordance with clause 7.1 will be deemed to have been received:
		1. if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; or
		2. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second working day after posting.
	3. A notice given under this Licence shall not be validly given if sent by email or fax.
	4. This clause 7 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
3. **No warranties for use or condition**
	1. The Licensor gives no warranty that the Premises is physically fit for the purposes specified in clause 2.
	2. The Licensee acknowledges that it does not rely on, and shall 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 Licensor before the date of this Licence as to any of the matters mentioned in this Licence and (without prejudice to the generality of the foregoing) in clause 8.1.
	3. Nothing in this clause 8 shall limit or exclude any liability for fraud.
4. **Limitation of Licensor's liability**
	1. Subject to clause 9.2, the Licensor is not liable for:
		1. the death of, or injury to the Licensee, its employees, customers or invitees to the Premises; or
		2. damage to any property of the Licensee or that of the Licensee's employees, customers or other invitees to the Premises; or
		3. any losses, claims, demands, actions, proceedings, damages, costs or expenses or other liability incurred by Licensee or the Licensee's employees, customers or other invitees to the Premises in the exercise or purported exercise of the rights granted by clause 2.
	2. Nothing in clause 9.1 shall limit or exclude the Licensor's liability for:
		1. death or personal injury or damage to property caused by negligence on the part of the Licensor or its employees or agents; or
		2. any matter in respect of which it would be unlawful for the Licensor to exclude or restrict liability.
5. **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.

1. **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.

1. **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 Licence has been entered into on the date stated at the beginning of it.

**Schedule 1** **- Rights granted to licensee**

The right for the Licensee to use during the Designated Hours:

1. such parts of the Common Parts for the purpose of access to and egress from the Premises as shall from time to time be designated by the Licensor for such purpose;
2. the Service Media serving the Premises; and
3. to use the toilet facilities shown coloured [COLOUR] on the Plan.

**Schedule 2** **- Rules and regulations**

1. The Licensee shall:
	1. nominate a representative for all matters in respect of this Licence;
	2. be responsible for the custody of its own assets (the Licensor will advise ownership of other assets).
2. The Licensor shall:
	1. give details of services provided by the Licensor to the Licensee when the Licensee moves into the Building; and
	2. have the discretion to issue rules and regulations to ensure that the occupation of the Licensor’s Property is enjoyed by all and, for example, reasonable and proper rules and regulations can be imposed to deal with, but not limited to, the following:
		1. objects blocking thoroughfares;
		2. the meeting rooms and/or public areas left in an untidy condition;
		3. damage to the building generally (for example, to carpets);
		4. unauthorised visitors; and
		5. inappropriate behaviour in the Building, such as general untidiness.

|  |  |  |
| --- | --- | --- |
| Signed by [NAME] for and on behalf of [**THE COUNCIL**] | ))) |  |
| Director |  | ………………………………………………….. |

|  |  |  |
| --- | --- | --- |
| Signed by [NAME OF DIRECTOR] for and on behalf of [**THE MUTUAL**] | ))) |  |
| Director |  | ………………………………………………….. |