

Notes for Overfiring licence

Key Features:

This licence is intended for use on a certain number of agreed days when firing takes place.

You should be satisfied that the party entering in to the licence is the owner and a copy of the registered title should be provided to verify this or if the title is unregistered, you should ask for an examined copy of the conveyance to the licensor. In the event of any uncertainty, reference should be made to the legal team. All of the owners should enter in to the licence if there is more than one.

Details of all existing occupation should be included in the Particulars so that you can ensure their safety and provide byelaws and notices to all relevant parties. The licensor must obtain the Ministry of Defence's consent before granting any new leases or licences.

The licence permits continuation after the fixed term with a review of the licence fee on an RPI basis. Please add the relevant details to the Particulars.

Please consider and amend as appropriate the definition of agreed compensation which relates to the death or injury of animals (see clause 6.6).

The obligation to provide details of byelaws and notices should be noted.

The agreed notice is the period of notice that we have to give to terminate the licence during the licence period or that either party can give to terminate after the expiration of the fixed term (see clauses 7 and 8). From our point of view this will depend on operational considerations.

Dated [Insert Date of Licence]

Overfiring Licence

A licence permitting the use of land as and for a Firing Range Danger Area

between

[Insert Party details]

and

THE SECRETARY OF STATE FOR DEFENCE



**Defence
Infrastructure
Organisation**

PARTICULARS OF LICENCE	
A. Date	[Insert date of licence]
B. Licensor	[Insert Company Name] of [Insert Licensor's company full address (including postcode)] (Registered company number: [Insert registered company number])
C. Authority	THE SECRETARY OF STATE FOR DEFENCE care of Defence Infrastructure Organisation, [insert full DIO address including postcode] Reference: D/LA/PROP/[Insert DIO reference]
D. Licence Fee	£0.00 per annum inclusive of VAT (if payable)
E. Licence Fee Payment Dates	[insert payment dates] in each year
F. Licence Period G.	The period from [insert the date of this licence] until and including the Termination Date together with any continuation period by virtue of the provisions of clause 8 of this licence.
H. Agreed Days I.	[add agreed dates/number of days] inclusive in each year. If the Property is not to be used on any dates ensure that these dates are excluded here
J. Property	Land at [add full description] edged in [red] on the Plan.
K. Firing Range	[add details of the firing range]
L. Plan	The plan annexed to this licence.
M. Termination Date	[Insert termination date]
N. Licence Fee Review Date	[Insert licence fee review date] if this licence is extended pursuant to the provisions of clause 8 hereof and every [fifth] anniversary of that date
O. Base Fee	£0.00 per annum inclusive of VAT (if payable).
P. Base RPI Month	[insert base rate RPI]
Q. RPI	The Retail Prices Index or any official index replacing it.
R. Agreed Compensation	£500
S. Agreed Notice	[6 months]
T. Existing Occupation	[add full details of all existing leases and licences]

THIS LICENCE is dated

BACKGROUND

- (1) The Licensor is the owner of the Property.
- (2) The Authority desires to use the Property as and for a danger area in connection with the Firing Range.

AGREED TERMS

1 INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this licence
 - (a) **Authorised Persons:** means personnel of Her Majesty's forces, visiting forces, cadet units, rifle clubs and any other persons authorised by the Authority
 - (b) **Interest Rate** means interest at the base lending rate from time to time of Lloyds TSB Bank plc or if that base lending rate stops being used or published then at a comparable commercial rate reasonably determined by the Licensor
 - (c) **Rights:** means the rights granted by clause 2.1 of this licence.
- 1.2 Clause, annex, schedule and paragraph headings do not affect the interpretation of this licence.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 Words in the singular include the plural and vice versa.
- 1.5 A reference to one gender includes a reference to the other genders.
- 1.6 A reference to any party or person shall include that party's or person's personal representatives successors or permitted assigns.
- 1.7 A reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time, taking account of any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts.
- 1.8 A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.9 A reference to **writing** or **written** excludes faxes and e-mail.
- 1.10 A **working day** is any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.
- 1.11 A **person** includes a corporate or unincorporated body.
- 1.12 A reference to a document is a reference to that document as varied or novated (in each case other than in breach of the provisions of this licence) at any time.
- 1.13 Unless the context otherwise requires, a reference to the **Property** is to the whole and any part of it.
- 1.14 References to clauses, annexes and schedules are to the clauses annexes and schedules of this licence. References to paragraphs are to paragraphs of the relevant schedule.

- 1.15 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.16 Any obligation in this licence on a person not to do something includes an obligation not to agree or allow that thing to be done and to prevent such act or thing being done by a third party.

2 LICENCE TO OVERFIRE

- 2.1 The Authority and the Authorised Persons shall have the following rights:
- (a) the right to use the Property on the Agreed Days as and for a danger area in connection with the Firing Range over which, or into which [*bullets, grenades, or projectiles (*delete as appropriate)] fired from all types of weapons on the Firing Range may ricochet or otherwise accidentally pass or fall;
 - (b) the right to exclude the Licensor and all others from the Property in the interests of health and safety or operational security;
 - (c) the right to enter on the Property for the purpose of searching for and removing or detonating spent or unexploded ammunition with all necessary materials and apparatus for that purpose;
 - (d) the right to erect and maintain warning notice boards, flag poles, lights and danger posts on land belonging to the Licensor on or near the Property in such positions as the Licensor may reasonably approve and to enter on such land with all necessary materials and apparatus for that purpose;
 - (e) the right to enter on the Property to repair construct, re-install, maintain, upgrade, improve, alter or rebuild any structure or feature associated with the Firing Range;
 - (f) the right when warning flags/lights are flying/lit to enter on to the Property to enforce any byelaws or to take such steps as are reasonably necessary to protect any rights granted to the Authority on the Property or to ensure the safety and security of the Property or the Licensor, exercising such right so far as possible in such a manner as shall not interfere with the Licensor's use of the Property; and
 - (g) the right to impose such byelaws on the Property as are reasonably necessary to protect the Rights or to ensure the safety and security of the Property.
- 2.2 The Licensor shall have no access to the Property during the Agreed Days or on any other days as the Authority acting reasonably shall deem necessary on safety grounds.
- 2.3 In exercising the rights granted by clause 2.1 the Authority shall cause as little damage and disturbance as possible and make good all damage actually caused to the Property as soon as reasonably possible.

3 LICENCE PERIOD

This licence will terminate on the Termination Date unless continued pursuant to the provisions of clause 8.

4 THE AUTHORITY'S OBLIGATIONS

The Authority shall:

- 4.1 Pay the Licence Fee without any deduction on the Licence Fee Payment Date.
- 4.2 Use all reasonable endeavours to agree and record in writing the Agreed Days with the Licensor.
- 4.3 Except in the case of an emergency give at least 7 days notice in writing to the Licensor of any proposed use of the Property or any proposed access to the Property, provided that separate notices in respect of use and entry shall not be required.
- 4.4 Give to the Licensor copies of all byelaws, notices and written directions or instructions made or given by the Authority in respect of the Property for the purpose of avoiding injury or damage to persons or to the Property.
- 4.5 Use all reasonable endeavours to prevent any civil or military servants of the Crown or its allies from entering or remaining on the Property except during the times and for the purposes hereby authorised, other than where exercising any public rights.
- 4.6 Fly red danger flags or illuminate red danger lights at conspicuous points on or near the Property and erect suitable warning notice boards when live ammunition is being used on the Firing Range.
- 4.7 Pay compensation to the Licensor as assessed and payable under clause 6
- 4.8 Subject to the provisions of clause 4.8 and the Licensor complying with the provisions of clause 5 of this licence to indemnify the Licensor from and against all actions, proceedings, costs, claims and demands brought or made against the Licensor during the Licence Period in respect or any loss or damage (including loss of life or injury) to the extent that such loss or damage is caused by the exercise or purported exercise of the Rights or by the act or default of any Authorised Person in the neighbourhood for the purpose of exercising the Rights.
- 4.9 The indemnity in clause 4.8 shall exclude any damage or injury due to the contributory negligence of any person other than the Authorised Persons acting within the scope of their authority.
- 4.10 At the expiration or sooner determination of the Licence Period remove all notice boards and to cause a thorough search to be made of the Property for unexploded projectiles and to remove any found.

5 THE LICENSOR'S OBLIGATIONS

The Licensor shall:

- 5.1 Comply with all byelaws, notices, directions or instructions, including but not limited to when the warning flags/lights are flying/lit.
- 5.2 Comply with all directions or instructions notifying the Licensor of the dates on which firing will be carried out, for the purpose of avoiding any damage or injury to the property of the Licensor and for securing the personal safety of Authorised Persons, the Licensor or other occupiers of the property.
- 5.3 Not do or permit to be done any act or thing in contravention of byelaws, notices, directions or instructions or any other terms of this licence and to use his best endeavours to ensure that all occupiers and other persons that are on the Property are made aware of and comply with the Licensor's obligations under this licence.

- 5.4 Use all reasonable endeavours to agree and record in writing the Agreed Days with the Authority.
- 5.5 Not enter or remain upon the Property while firing is in progress on the Firing Range and the Licensor shall use his best endeavours to prevent persons from entering or remaining on the Property at such times.
- 5.6 Indemnify and keep indemnified the Authority from and against all actions, proceedings, costs, claims and demands brought or made against the Authority during the continuance of this licence in respect or any loss or damage (which expression shall include loss of life or injury) to the extent that such loss or damage is caused by the act or default of the Licensor or any person authorised by the Licensor.
- 5.7 Notify the Authority as soon as possible of any actions, proceedings, claims or demands brought or made against the Licensor.
- 5.8 Not compound, settle or admit any actions, proceedings, claims or demands for which indemnity is claimed under clause 4.8 without the consent of the Authority who may at its own expense defend, dispute and settle the same in the name and on behalf of the Licensor. The Licensor shall (at the Authority's expense) provide all reasonable assistance that the Authority may require for such purpose.
- 5.9 Obtain the consent of the Authority (such consent to be conditional on the tenant or licensee entering in to a deed of covenant with the Authority to comply with the terms of this licence) before granting any lease, licence or tenancy. Any failure to obtain consent under this clause will release the Authority from its obligations under clause 6 of this licence.
- 5.10 Make every sale, conveyance, lease or other disposal of the Property or any part of the Property during Licence Period subject to the terms of this licence.
- 5.11 Procure that every conveyance, transfer or lease of the Property contains a direct covenant with the Authority by way of a deed from the donee, lessee, tenant or assignee to observe and perform the terms of this licence so far as they affect the Property and remain to be observed and performed.
- 5.12 Consent to the registration of a restriction against the Licensor's registered title if the Licensor's land is, or shall become, registered at H M Land Registry providing that no dealings with the Property may be registered without the consent of the Authority.

6 COMPENSATION

- 6.1 The Authority shall pay compensation to the Licensor, or to an occupier who is in occupation of the land with the approval of the Authority in accordance with clause 5.9, for loss or damage to property, crops, cattle or other animals by the exercise or purported exercise of the Rights or by the acts of Authorised Persons on the Property which shall be shown by reasonably certain evidence to have been caused by the exercise or purported exercise of the Rights.
- 6.2 Any claim under 6.1 shall exclude any loss suffered because full use of the Property is not available during the exercise of the Rights.
- 6.3 The Licensor shall inform the Authority in writing of his intention to make a claim for compensation no later than 72 hours after the discovery of any such loss, damage or injury, stating the nature of such loss, damage or

injury and where and (in so far as possible) when such loss, damage or injury occurred.

- 6.4 Except in the case of personal injury the Licensor shall afford any person or persons authorised by the Authority full facilities to inspect such damage or injury.
- 6.5 Any claim for compensation shall be made in writing to the Authority no later than 14 days after the occurrence of the loss damage or injury and it shall be subject to the Licensor complying with his obligation in clause 6.3.
- 6.6 Without prejudice to sub-clause 6.1 the amount of the compensation payable shall be calculated as follows:
- (a) where there has been damage to land, buildings, walls, fences, hedges, roads, gates, dykes and drains and other real or personal property of the Licensor (except timber crops or any loss or injury of cattle, horses or sheep) the cost of making good or repairing such damage;
 - (b) where there has been total loss of any one head of cattle or any horse or sheep the then current market value of the animal or the Agreed Compensation whichever is less; and
 - (c) where there has been injury not culminating in death of any one head of cattle or any horse or sheep the reduction by reason of such injury in the then current market value of the animal or the Agreed Compensation whichever is less.
- 6.7 Any claim for injury to cattle, horses or sheep shall include a certificate of a veterinary surgeon giving details of the injury and the Authority shall pay the reasonable fees of the veterinary surgeon for such certificate where the claim is established.
- 6.8 The compensation payable on any claim shall be reduced or totally extinguished on the ground of the contributory negligence of any person other than the Authority and Authorised Persons acting within the scope of their authority **PROVIDED THAT** it shall not be deemed negligent to leave stock to graze or fixed or movable equipment to be or remain on the Property or for usual agricultural or sporting items to be or remain on the Property during the exercise of the Rights.
- 6.9 Instead of paying compensation for damage to any real or personal property the Authority may elect to make good such damage to the reasonable satisfaction of the claimant.
- 6.10 No compensation shall be payable and the Authority shall not be liable to make good any damage if the Licensor or the party claiming compensation shall have failed to observe and perform the covenants contained in clause 5 of this licence and such failure shall have resulted in an event or events which, but for this sub-clause, would have given the Licensor the right to make a claim.
- 6.11 The Licensor confirms that at the date of this licence the only licences or leases that have been granted over the Property are those set out in the Particulars.

7 TERMINATION

- 7.1 If the Licence Fee is unpaid for a period of 3 months from the Licence Fee Payment Date or if there shall have been any breach of covenant on the

part of the Authority which shall remain un-remedied after 3 months after service of notice of such breach the Licensor may determine this licence.

- 7.2 The Authority may determine this licence at any time by giving to the Licensor no less than the Agreed Notice of its desire to terminate this licence and at the expiration of the Agreed Notice this licence shall absolutely determine.
- 7.3 If this licence is extended pursuant to clause 8.3 then at any time after the Termination Date either party may terminate this licence by giving not less than the Agreed Notice and at the expiration of the Agreed Notice this licence shall absolutely determine.
- 7.4 Any termination under the provisions of this clause shall be without prejudice to the right of either party to take action for any antecedent breach of covenant.
- 7.5 On the date of determination, the Licensor shall refund to the Authority the proportion of the Licence Fee and any VAT paid in respect of it for the period from and including the date of determination to but excluding the next of the Licence Fee Payment Date, calculated on a daily basis.

8 CONTINUATION

- 8.1 If the Authority shall be desirous of continuing this licence then it may serve notice in writing on the Licensor no later than 6 months before the Termination Date ("**the Continuation Notice**").
- 8.2 The Licensor shall have 3 months from the date of the Continuation Notice to indicate its opposition to the Authority by serving on the Authority notice in writing indicating opposition ("**an Opposition Notice**")
- 8.3 If the Licensor is not opposed to the renewal of this licence or otherwise fails to validly serve an Opposition Notice in accordance with clause 8.2 then this licence shall continue from year to year until determined in accordance with clause 7.

9 REVIEW OF THE LICENCE FEE

- 9.1 In this clause the **President** is the President for the time being of the Royal Institution of Chartered Surveyors or a person acting on his behalf and the **Surveyor** is the independent valuer appointed pursuant to clause 9.6
- 9.2 The amount of Licence Fee shall be reviewed on each Licence Fee Review Date to equal:
 - (a) the Licence Fee payable immediately before the relevant Licence Fee Review Date (or which would then be payable but for any abatement or suspension of the Licence Fee or restriction on the right to collect it) or if greater
 - (b) the indexed fee determined pursuant to this clause.
- 9.3 The indexed fee shall be determined at the relevant Licence Fee Review Date by multiplying the Base Fee by the All Items index value of the RPI for the month before the month in which the relevant Licence Fee Review Date falls then dividing the product by the All Items index value of the RPI for the Base RPI Month.
- 9.4 The Licensor shall calculate the indexed fee as soon as reasonably practicable and shall give the Authority written notice of the indexed fee as soon as it has been calculated.

- 9.5 If the revised Licence Fee has not been calculated by the Licensor and notified to the Authority on or before the relevant Licence Fee Review Date, the Licence Fee payable from that Licence Fee Review Date shall continue at the rate payable immediately before that Licence Fee Review Date. On the date the revised Licence Fee is notified by the Licensor to the Authority, the Authority shall pay:
- (a) the shortfall (if any) between the amount that it has paid for the period from the Licence Fee Review Date until the usual payment date for the Licence Fee following the date of notification of the revised Licence Fee and the amount that would have been payable had the revised Licence Fee been notified on or before that Licence Fee Review Date; and
 - (b) interest at the Interest Rate on that shortfall calculated on a daily basis by reference to the usual payment date for the Licence Fee on which parts of the shortfall would have been payable if the revised Licence Fee had been notified on or before that Licence Fee Review Date and the date payment is received by the Licensor.
- 9.6 Time shall not be of the essence for the purposes of this clause.
- 9.7 Subject to clause 9.8 if there is any change to the methods used to compile the RPI including any change to the items from which the All Items index of the RPI is compiled or if the reference base used to compile the RPI changes the calculation of the indexed fee shall be made taking into account the effect of any such change.
- 9.8 If either the Licensor or the Authority reasonably believes that any change referred to in clause 9.7 would fundamentally alter the calculation of the indexed fee in accordance with this clause 9 and has given notice to the other party of this belief, or if it becomes impossible or impracticable to calculate the indexed fee in accordance with this clause 9, then the Licensor and the Authority shall endeavour within a reasonable time to agree an alternative mechanism for setting the Licence Fee which may (where reasonable) include or consist of substituting an alternative index for the RPI. In default of such agreement an alternative mechanism shall be determined by the Surveyor.
- 9.9 If any question or dispute arises between the parties as to the amount of the Licence Fee payable or as to the interpretation application or effect of any part of this clause 9 or if the Licensor and the Authority fail to reach agreement under clause 9.8 the question dispute or disagreement is to be determined by the Surveyor. The Surveyor shall have full power to determine the question dispute or disagreement and shall have power to determine any issue involving the interpretation of any provision of this licence his jurisdiction to determine the question dispute or disagreement referred to him or his terms of reference. When determining such a question dispute or disagreement the Surveyor may, if he considers it appropriate, specify that an alternative mechanism for setting the Licence Fee should apply to this licence and this includes (but is not limited to) substituting an alternative index for the RPI.
- 9.10 The Surveyor shall be an independent valuer who is a Member or Fellow of the Royal Institution of Chartered Surveyors. The Licensor and the Authority may by agreement appoint the Surveyor at any time before either of them applies to the President for the Surveyor to be appointed.

- 9.11 The Surveyor shall act as an expert and not as an arbitrator. The Surveyor's decision shall be given in writing and the Surveyor shall provide reasons for any determination. The Surveyor's written decision on the matters referred to him shall be final and binding in the absence of manifest error or fraud.
- 9.12 The Surveyor shall give the Licensor and the Authority an opportunity to make written representations to the Surveyor and to make written counter-representations commenting on the representations of the other party to the Surveyor. The parties will provide (or procure that others provide) the Surveyor with such assistance and documents as the Surveyor reasonably requires for the purpose of reaching a decision.
- 9.13 If the Surveyor dies or becomes unwilling or incapable of acting or unreasonably delays in making any determination then either the Licensor or the Authority may apply to the President to discharge the Surveyor and clause 9.10 shall then apply in relation to the appointment of a replacement.
- 9.14 The fees and expenses of the Surveyor and the cost of the Surveyor's appointment and any counsel's fees, or other fees, reasonably incurred by the Surveyor shall be payable by the Licensor and the Authority in the proportions that the Surveyor directs (or if the Surveyor makes no direction then equally).

10 NOTICES

- 10.1 Any notice given under this licence must be in writing and signed by or on behalf of the party giving it
- 10.2 Notices shall be delivered by hand or sent by pre-paid first class post or recorded delivery to:
- (a) (if the recipient is a company) the party's registered office address;
 - (b) (if the recipient is the Secretary of State for Defence) the Defence Infrastructure Organisation at the address set out in the Particulars or such other address in England or Wales as shall have been notified to the party giving the notice; or
 - (c) (in any other case) the party's principal place of business.
- 10.3 Any such notice or document will be deemed to have been received:
- (a) if delivered personally at the time of delivery provided that if delivery occurs before 9.00 am on a working day the notice will be deemed to have been received at 9.00 am on that day and if delivery occurs after 5.00 pm on a working day or at any time on a day which is not a working day the notice will be deemed to have been received at 9.00 am on the next working day and
 - (b) in the case of pre-paid first class or recorded delivery post at 9.00 am on the working day after posting.
- 10.4 In proving delivery it will be sufficient to prove that delivery was made or that the envelope containing the notice or document was properly addressed and posted as a prepaid first class recorded delivery or registered letter.
- 10.5 A notice or document delivered under this licence will not be validly given or delivered if sent by e-mail.

11 DISPUTES

If any question or dispute shall arise between the parties hereto or their respective representatives concerning any matters contained in this licence or as to the meaning of any of the clauses or as to the rights duties or obligations of any of the parties hereto respectively or their respective representatives the same shall be referred to and determined by a single Arbitrator who failing agreement between the parties to the difference shall be nominated by the President for the time being of the Royal Institution of Chartered Surveyors subject to and in accordance with the provisions of the Arbitration Act 1996 or any statutory modification or re-enactment thereof for the time being in force

12 RIGHTS OF THIRD PARTIES

A person who is not a party to this licence may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.

13 CROWN IMMUNITY

Nothing herein contained shall in any way to restrict or otherwise prejudicially affect any Crown privilege or exemption enjoyed by the Authority.

14 Governing law and jurisdiction

- 14.1 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.
- 14.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises 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

Signed by

Signed for and on behalf of
THE SECRETARY OF STATE FOR DEFENCE Authorised Signatory