

NOTES FOR LICENCE TO OCCUPY - GENERIC USE
NB DETATCH THIS PAGE BEFORE ISSUING LICENCE

This licence is intended to cover use of parts of MOD estate where the occupier **will not have exclusive possession** of the occupied area AND a lease or tenancy at will **is not suitable** for use. A licence is a personal right or permission that offers no security to the occupier and use of the land for the purpose authorised by the licence will not create an estate in land.

It should not be used when any proposed activities:

- have an inherent danger attached to the proposed use; OR
- that require the use of a firing range.

If any one of the following applies:

- MOD is not the freehold owner of the property;
- The proposed use is unusual or high risk;
- The arrangement requires planning permission or listed buildings consent;
- The arrangement requires environmental consent;
- Physical changes are to be made to the property;
- Special insurance arrangements might apply;
- Members of the public, beyond the membership of the named licensee are to be given access to the property;
- The use includes guns or dogs;
- The proposed licensee is a company or commercial body, or other entity with whom MOD has had a previous dispute or is incorporated or constituted outside the United Kingdom;
- Special security arrangements are necessary; and
- Substantive amendments are needed beyond the completion of the "Particulars",

then please seek guidance from the MoDLA Property Team by contacting DIO-Legal@mod.gov.uk

NB This licence was last modified on 20 June 2018 and has not been checked or modified since.

DATED

20 []

LICENCE TO OCCUPY

between

THE SECRETARY OF STATE FOR DEFENCE

and

[INSERT LICENSEE NAME]

relating to

[INSERT PROPERTY DETAILS]



MINISTRY OF DEFENCE

**Defence
Infrastructure
Organisation**

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This Licence is dated

[insert date of licence]

1. INTERPRETATION

The following particulars and rules of interpretation apply in this licence:

PARTICULARS	
Appointed Officer	[insert name] appointed by the Licensor
[[Building OR Centre]	[all that land and buildings known as [NAME AND ADDRESS OF BUILDING OR CENTRE] [and shown edged [COLOUR] on the Plan] or such reduced or extended area as the Licensor may from time to time designate as comprising the [Building OR Centre].
[Common Parts	such roads, paths, entrance halls, corridors, lifts, staircases, landing and other means of access in or upon the [Building OR Centre] the use of which is necessary for obtaining access to and egress from the Property as designated from time to time by the Licensor.]
Competent Authority	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	[NUMBER] [hours OR days] per week or such other [hours OR days] as the Licensor in its absolute discretion may determine on [NUMBER] [days' OR weeks'] notice to the Licensee.]
Licence Start Date	
Licence End Date	
Licence Fee	£ [plus VAT [if applicable]] [per week/month/annum] [the amount of [AMOUNT] POUNDS per [week OR month] [or such other amount as the Licensor in its absolute discretion may from time to time determine on giving [AMOUNT] [hours' OR days' OR weeks' OR months'] notice]].

Licence Preparation Fee	the Licensor's costs in preparing this licence in the amount of £[] plus VAT
Licence Payment Date	[the date of this Licence [Or alternative dates if Fee is being paid monthly/quarterly/annually]
Licence Period	the period of this Licence commencing on and including the Licence Start Date and ending on and including the Licence End Date or until the date on which this licence is determined in accordance with clause 5.
Licensee	[INSERT LICENSEE NAME/ADDRESS]
Licensor	THE SECRETARY OF STATE FOR DEFENCE care of Defence Infrastructure Organisation, [insert DIO office address]
Necessary Consents	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	[insert details of proposed use] OR [SPECIFY USE OR within Use Class [USE CLASS] of the Town and Country Planning (Use Classes) Order 1987 as at the date this licence is granted].
Plan	the plan attached to this Licence.
Property	the land and building[s] at [ADDRESS OF THE PROPERTY] [shown edged [COLOUR] on the Plan] [which shall include all fixtures and fittings and plant and machinery thereon] and as shown edged red on the plan annexed to this Licence.
Right of Way	the roadway shown [insert colour/edged [brown] on the Plan or such other route as the Licensor may designate from time to time
Service Media	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.
VAT	value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax.

- 1.1 Clause, Schedule and paragraph headings shall not affect the interpretation of this licence.
- 1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 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.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 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.
- 1.7 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.
- 1.8 A reference to **writing** or **written** excludes fax and e-mail.
- 1.9 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 best endeavours to prevent that thing being done by another person.
- 1.10 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.
- 1.11 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.

1.12 [Unless expressly provided otherwise, the obligations and liabilities of the Licensee under this licence are joint and several.]

1.13 A **working day** is any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in [England **OR** Wales].

2. **LICENCE TO OCCUPY**

2.1 Subject to clause 3 and clause 5, the Licenser permits the Licensee to occupy the Property for the Permitted Use for the Licence Period [during the Designated Hours] in common with the Licenser and all others authorised by the Licenser (so far as is not inconsistent with the rights given to the Licensee to use the Property for the Permitted Use) together with the rights mentioned in clause 2.2.

2.2 During the Licence Period or such alternative dates and times as shall be agreed by the Appointed Officer the Licenser permits to the Licensee a licence to use the Property for the purpose of the Permitted Use by the Licensee only (but not for any other purpose) which shall include a licence:

- (a) to park motor cars and other vehicles (not exceeding [insert amount of tons] tons in load capacity at such a location as shall be determined by the Appointed Officer.
- (b) to pass and re-pass (in common with the Licenser and all persons authorised by it) with or without vehicles over the Right of Way (if any named in the Particulars).

2.3 The Licensee acknowledges that:

- (a) the Licensee shall occupy the Property as a licensee and that no relationship of landlord and tenant is created between the Licenser and the Licensee by this licence;
- (b) the Licenser retains control, possession and management of the Property and the Licensee has no right to exclude the Licenser from the Property; [and]
- (c) the licence to occupy granted by this agreement is personal to the Licensee and is not assignable and the rights and obligations given in clauses 2 and 3 of this Licence, may only be exercised by the Licensee and its employees; [and]
- (d) [without prejudice to its rights under clause 5, the Licenser shall be entitled at any time on giving not less than [AMOUNT] [days' **OR** weeks'] notice to require the Licensee to transfer to [alternative **OR** comparable] space elsewhere within the [Building **OR** Centre] and the Licensee shall comply with such requirement.]

3. LICENSEE'S OBLIGATIONS

3.1 The Licensee agrees and undertakes:

- (a) to pay:
 - (i) to the Licensor the Licence Fee payable without any deduction and the Licence Fee shall be paid upon the Licence Payment Date unless specifically agreed otherwise between the Licensor and the Licensee in advance on the [first day] of each [week **OR** month] and proportionately for any period of less than a [week **OR** month] the first such payment being for the period from and including the Licence Start Date to the end of the [week **OR** month] following such date to be made on [DATE] together with such VAT as may be chargeable on the Licence Fee;
 - (ii) [to the relevant suppliers all costs in connection with the supply and removal of electricity, gas, water, sewage, telecommunications and data and other services and utilities to or from the Property;] and
 - (iii) to the Licensor interest on the Licence Fee or other payments at the rate of 4 percent per annum above the base rate of Barclays Bank Plc 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 within [7/14] days of the due date (whether formally demanded or not).
- (b) to keep the Property clean, tidy and clear of rubbish throughout the Licence Period;
- (c) not to use the Property other than for the Permitted Use;
- (d) not to make any alteration or addition whatsoever to the Property;
- (e) not to display any advertisement, signboards, nameplate, inscription, flag, banner, placard, poster, signs or notices at the Property [or elsewhere in the [Building **OR** Centre]] without the prior written consent of the Licensor [such consent not to be unreasonably withheld or delayed];
- (f) not to do or permit to be done on the Property 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 tenants or occupiers of the [Building **OR** Centre]] or any owner or occupier of neighbouring property;
- (g) not to cause or permit to be caused any damage to:
 - (i) the Property, [Building **OR** Centre] or any neighbouring property; or

- (ii) any property of the owners or occupiers of the Property, [Building **OR** Centre] or any neighbouring property;
 - (h) [not to obstruct the Common Parts, make them dirty or untidy or leave any rubbish on them;]
 - (i) not to apply for any planning permission in respect of the Property;
 - (j) not obstruct or permit or suffer the obstruction of the Right of Way;
 - (k) not permit any unseemly or disreputable behaviour to take place on the Property;
 - (l) not to do anything that will or might constitute a breach of any Necessary Consents affecting the Property or which will or might vitiate in whole or in part any insurance effected by the Licensor in respect of the Property [and [Building **OR** Centre]] [or any fixtures fittings or chattels in the Property];
 - (m) [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 Property;] and
 - (n) to observe any rules and regulations the Licensor makes and notifies to the Licensee from time to time governing the Licensee's use of the Property [and the Common Parts];
- 3.2 The Licensee will 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:
- (i) this licence; and
 - (ii) any breach of the Licensee's undertakings contained in clause 3; and
 - (iii) the exercise of any rights given in clause 2;
- 3.3 The Licensee will obtain at it's own cost appropriate third party and public liability insurance to a minimum of £ [2/5/10] ([two/five/ten]) million or such greater sum as shall be advised by the Licensor in respect of any claim loss or damage arising directly or indirectly out of the Licensee's use of the Property and to provide evidence of such insurance to the Licensor upon request.
- 3.4 The Licensee will not make any claim against the Licensor or against any member of a Visiting Force (as defined in the Visiting Forces Act 1952 or any order made there under) or member of a civilian component of such Force in respect of loss of or damage to property which may be suffered by the Licensee or by any other person in the course of or as a result of the exercise of any right hereunder whatever the cause of such loss or damage may be.

3.5 The Licensee will exercise the rights granted by this Licence entirely at its own risk and to indemnify and keep the Licensors indemnified from and against all claims demands actions proceedings damages losses costs and expenses (including without limitation legal and other professional advisers' fees) which are made or brought against or incurred or suffered by the Licensors directly or indirectly and whether wholly or in part as a result of this Licence and this indemnity shall cover all consequential and indirect losses suffered by the Licensors.

3.6 The Licensee will:

- (a) comply with any rules and regulations given by the Licensors or Appointed Officer and notified to the Licensee from time to time in respect of the Property;
- (b) [give full written particulars to the Appointed Officer of the detailed arrangements for the Permitted Use and at all times during the Licence Period to comply with and use the Property in accordance with any directions affecting the Property or the use of the Property which may be given by the Licensors or the Appointed Officer and in particular with any Ministry of Defence byelaws regulations instructions directives or standing orders in force [including but not limited to the carrying of identification cards or badges;]]
- (c) ensure that all relevant licences and consents that are required for the Permitted Use under all laws and byelaws are obtained and produce copies of all licences and consents to the Appointed Officer if required to do so; and
- (a) ensure that all necessary notices required in connection with the Permitted Use are obtained.

3.7 Upon the determination of the Licence in accordance with clause 5 the Licensee shall make good all damage occasioned to the Property by the Licensee and shall remove all its goods and chattels and remove all litter and rubbish from the Property and ensure that Property and the Right of Way are left in a clean and tidy condition to the satisfaction of the Appointed Officer.

4. LICENSOR'S RIGHTS

4.1 The Licensors retains the right to terminate this Licence at any time if the Licensee has breached any of its obligations under this Licence or it affects any use of the Property by the Licensors.

4.2 This Licence does not confer upon the Licensee the right to have exclusive occupation of any part of the Property and consequently during the Licence Period the Licensors its agents and employees shall have access to the Property

for monitoring, inspection and other purposes and the Licensor and those authorised by it shall share occupation of the Property with the Licensee notwithstanding that the Licensor shall use all reasonable endeavours to ensure that its occupation and that of others authorised by it does not interfere with the use of the Property by the Licensee pursuant to this Licence.

- 4.3 The Licensor and the Appointed Officer shall have the right to refuse entry to the Property or remove any person without reason if in their absolute discretion they believe that the refusal or removal is required in respect of the Permitted Use of the Property under this Licence.

5. TERMINATION

- 5.1 This licence shall end on the earliest of:

- (a) immediately upon [[INSERT DATE ON WHICH LICENCE TO END];
or
- (b) the expiry of not less than [INSERT NUMBER] [hours' **OR** days' **OR** weeks' **OR** months'] notice given by the Licensor to the Licensee or by the Licensee to the Licensor.

- 5.2 This Licence shall also be terminated upon any of the following events:

- (a) immediately if in the sole opinion of the Appointed Officer, acting on behalf of the Licensor, the Property is no longer fit for the purpose of carrying out the Permitted Use; or
- (b) immediately upon service by the Licensor upon the Licensee of a written notice as a result of a breach by the Licensee of any of the Licensee's obligations contained in this Licence.

- 5.3 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.

- 5.4 The Licensee shall not be entitled to any refund of the Licence Fee or the Licence Preparation Fee if this Licence is cancelled no less than [14] days before the Licence Fee is payable. [If the Licensee provides written notice to the Licensor to terminate before on or at least 14 days prior to the date that the Licence Fee is due then the Licensee shall be entitled to a refund equalling 50% of the Licence Fee.]

6. NOTICES

- 6.1 Any notice or other communication 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:
- (a) to the Licensor at: [ADDRESS];
 - (b) to the Licensee at: [ADDRESS] and marked for the attention of [NAME OR POSITION],
 - (c) or as otherwise specified by the relevant party by notice in writing to each other party.
- 6.2 Any notice or other communication given in accordance with clause 6.1 will be deemed to have been received:
- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice or other communication is left at the proper address; or
 - (b) 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.
- 6.3 A notice or other communication given under this licence shall not be validly given if sent by e-mail.
- 6.4 This clause 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.

7. COSTS

On completion of this Licence, the Licensee shall pay to the Licensor on a full indemnity basis all costs, fees, charges and expenses and disbursements of the Licensor and their professional advisors incurred in relation to the negotiation and completion of this licence, plus an amount equivalent to VAT on them except to the extent that the Licensor is able to recover that VAT.

8. NO WARRANTIES FOR USE OR CONDITION

- 8.1 The Licensor gives no warranty that the Property possesses the Necessary Consents for the Permitted Use.
- 8.2 The Licensor gives no warranty that the Property is physically fit for the purposes specified in clause 2.

8.3 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 clause 8.1 or clause 8.2.

8.4 Nothing in this clause shall limit or exclude any liability for fraud.

9. LIMITATION OF LICENSOR'S LIABILITY

9.1 Subject to clause 9.2, the Licensor is not liable for:

- (a) the death of, or injury to the Licensee, its employees, customers or invitees to the Property; or
- (b) damage to any property of the Licensee or that of the Licensee's employees, customers or other invitees to the Property; or
- (c) 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 Property in the exercise or purported exercise of the rights granted by clause 2.

9.2 Nothing in clause 9.1 shall limit or exclude the Licensor's liability for:

- (a) death or personal injury or damage to property caused by negligence on the part of the Licensor or its employees or agents; or
- (b) any matter in respect of which it would be unlawful for the Licensor to exclude or restrict liability.

10. 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.

11. 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.

12. 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.

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

.....
Authorised Signatory

Signed by the Licensee

.....
[Authorised Signatory/Director/Secretary]