

**DATED** \_\_\_\_\_ **2009**

<b>HER MAJESTY THE QUEEN</b>	(1)
<b>THE CROWN ESTATE COMMISSIONERS</b>	(2)
<b>INSTOW PARISH COUNCIL</b>	(3)

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REGULATING LEASE  
of  
foreshore at Instow, Devon

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Estates Ref: 17 57 35  
PO Number:  
Bond Pearce Ref: 43090.1588

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<b>LR1. Date of lease</b>	2009
<b>LR2. Title number(s)</b> <i>Leave LR2.1 blank if the landlord's title is not registered.</i> <i>Include in LR2.2 any existing title number(s) relating to matters referred to in LR9, LR10, LR11 and LR13.</i>	<b>LR2.1 Landlord's title number(s)</b>  <b>LR2.2 Other title numbers</b>
<b>LR3. Parties to this lease</b> <i>Give full names, addresses and company's registered number, if any, of each of the parties. For Scottish companies, use an SC prefix. For limited liability partnerships, use an OC prefix. For foreign companies, give territory in which incorporated.</i> <i>You must use the descriptions "landlord" and "tenant" even if the parties are described differently in the lease (e.g. lessor and lessee).</i> <i>You must set out in full the details of the parties. You may not simply refer to details set out somewhere else in the lease.</i> <i>Specify the capacity of each other party, for example "management company" "guarantor" etc.</i> <i>If there are no other parties, delete the "other parties" section.</i>	<b>Landlord</b> The Crown Estate Commissioners acting on behalf of Her Majesty the Queen, 16 New Burlington Place, London W1S 2HX <b>The Commissioners</b> The Crown Estate Commissioners, 16 New Burlington Place, London W1S 2HX <b>Tenant</b> Instow Parish Council of 2 Sticklepark Court, Lake near Tawstock, Barnstaple, North Devon, EX31 3HN
<b>LR4. Property</b>	<b>In the case of a conflict between this clause and the remainder of this lease then, for the purposes of registration, this clause shall prevail.</b>  The Property as defined in clause 1 subject to the exceptions and reservations in clause 3.
<b>LR5. Prescribed statements etc.</b> <i>If the lease is granted to a charity, refer to Land Registry Practice Guide 14 for details of prescribed statements you must include.</i> <i>If the lease is granted under a tenant's right to a new lease under the 1993 Act, refer to Land Registry Practice Guide 27 for details of prescribed statements.</i>	<b>LR5.1 Statements prescribed under rules 179 (dispositions in favour of a charity), 180 (dispositions by a charity) or 196 (leases under the Leasehold Reform, Housing and Urban Development Act 1993) of the Land Registration Rules 2003.</b>  None
<i>If the lease is made under the Leasehold Reform Act 1967 or the Housing Acts 1985, 1988 or 1996, refer to Land Registry Practice Guide 64 for an example of how to fill in this clause</i>	<b>LR5.2 This lease is made under, or by reference to, provisions of:</b>  Not applicable
<b>LR6. Term for which the Property is leased</b>	The term specified in this lease at clause 1.
<b>LR7. Premium</b>	None

<p><b>LR8. Prohibitions or restrictions on disposing of this lease</b></p> <p><i>Do not set out here the wording of the provision.</i></p>	<p>This lease contains a provision that prohibits or restricts dispositions.</p>
<p><b>LR9. Rights of acquisition etc.</b></p> <p><i>Make sure you have included in LR2 any title number affected by these rights.</i></p> <p><i>LR9.3 includes a landlord's pre-emption right (a right to take back the premises if the tenant wishes to assign or underlet).</i></p>	<p><b>LR9.1 Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land</b></p> <p>None</p> <p><b>LR9.3 Landlord's contractual rights to acquire this lease</b></p> <p>None</p>
<p><b>LR10. Restrictive covenants given in this lease by the Landlord in respect of land other than the Property</b></p> <p><i>You must include the title number of the other land in LR2.2.</i></p>	<p>None</p>
<p><b>LR11. Easements</b></p> <p><i>You must include in LR2.2 the title number of the other property having the benefit of the excepted or reserved rights set out in this lease.</i></p>	<p><b>LR11.1 Easements granted by this lease for the benefit of the Property</b></p> <p>None</p> <p><b>LR11.2 Easements granted or reserved by this lease over the Property for the benefit of other property</b></p> <p>The easements in clause 3.2.</p>
<p><b>LR12. Estate rentcharge burdening the Property</b></p>	<p>None</p>

DATE

2009

PARTIES

- (1) HER MAJESTY THE QUEEN;
- (2) THE CROWN ESTATE COMMISSIONERS on behalf of Her Majesty acting in exercise of the powers conferred by the Crown Estate Act 1961 (the "Commissioners"); and
- (3) Instow Parish Council of 2 Sticklepark Court, Lake near Tawstock, Barnstaple, North Devon, EX31 3HN (the "Tenant").

OPERATIVE PROVISIONS

PART ONE: DEFINITIONS AND INTERPRETATION

**1 Definitions**

In this Lease the following expressions have the following meanings:

<b>1954 Act</b>	the Landlord and Tenant Act 1954
<b>Authority</b>	a statutory, public, local or other competent authority or a court or tribunal of competent jurisdiction or any agency or body owned or sponsored by the government
<b>Commissioners</b>	this includes any other person who takes over managing The Crown Estate
<b>Conduit</b>	a conduit, pipe, drain, gully, sewer, channel, culvert, gutter, flue, duct, wire, cable, main, optic fibre or other medium for the passage or transmission of any matter whether solid, liquid or gas (including air, smoke, steam, water, sewage, waste and petroleum) or electricity, light, power, sound, communications, impulses, information, data or other energy, wave or force (even if incorporeal or intangible), and all related structures and equipment
<b>End of the Tenancy</b>	the end of the Tenancy by expiry, re-entry, notice, surrender or otherwise
<b>Interest</b>	interest (both before and after any judgment) calculated on a daily basis from and including the date that interest becomes chargeable on any payment under this Lease to and including the day before the date that such payment is made
<b>Interest Rate</b>	3% a year above Barclays Bank Plc's base lending rate from time to time (or of another bank nominated by the Landlord at any time) or, if those base rates are not available at any time, another comparable rate of interest specified by the Landlord having regard to interest rates at that time
<b>Landlord</b>	for so long as the Reversion forms part of The Crown Estate, the Commissioners, and afterwards the person for the time being entitled to the Reversion
<b>this Lease</b>	this Lease and any document that is supplemental or collateral to it whether or not it is expressly stated to

	be so
<b>Legal Obligation</b>	<p>an obligation, requirement or restriction imposed by or under:</p> <p>(a) any present or future law including present or future statute, statutory instrument, statutory guidance or byelaw or common law;</p> <p>(b) any regulation, law or directive made or issued by or with the authority of the European Commission and/or the Council of Ministers; or</p> <p>(c) any present or future judgment, injunction, regulation, order, direction, requirement, notice or code of practice of any Authority,</p> <p>as far as it relates to the Property or the occupation or use of the Property, no matter on whom the obligation is imposed</p>
<b>Part</b>	a part of this Lease
<b>Principal Rent</b>	£750 a year or such other amount as is from time to time agreed or determined in accordance with Part Five or otherwise
<b>Property</b>	subject to Part Seven, the foreshore shown coloured pink on the attached plan at Instow in the Borough/District of Barnstaple in the County of Devon solely to assist in describing it but not to prevent any alterations to the boundaries of the Property if there are changes in the lines of mean high water and mean low water from time to time during the Tenancy
<b>Rents</b>	the rents reserved in clause 4
<b>Rent Payment Date</b>	1 January of every year
<b>Reversion</b>	the immediate reversionary interest in the Property
<b>Tenancy</b>	the tenancy created by this Lease including any statutory continuation of that tenancy
<b>Tenant</b>	this includes the Tenant's successors in title and, in the case of an individual, his personal representatives
<b>Term</b>	the term of 25 years beginning on the Term Start Date and ending on 31 December 2024
<b>Term Start Date</b>	1 January 2010
<b>Turnover Rent</b>	the Turnover Rent calculated in accordance with Part Four
<b>VAT</b>	value added tax or a similar tax that replaces it or is charged in addition to it

## **2 Interpreting this Lease**

- 2.1 The headings in this Lease are for reference only. They are not to be used to interpret the text beneath.
- 2.2 The Schedules to this Lease are part of this Lease. References to the parties, Schedules and clauses mean those in this Lease.
- 2.3 References to persons include bodies corporate, unincorporated associations and partnerships, in each case whether or not they have a separate legal identity.
- 2.4 Unless the context specifically requires otherwise:
- 2.4.1 words relating to one gender are treated as meaning any gender;
  - 2.4.2 words relating to individuals are treated as also meaning corporations and vice versa;
  - 2.4.3 words in the singular are treated as also meaning the plural and vice versa; and
  - 2.4.4 words relating to the whole are treated as including any part of the whole.
- 2.5 All agreements and obligations by a party in this Lease (whether or not expressed as covenants) are to be read as covenants by that party. Subject to clause 19.2, the Tenant will comply with its agreements and obligations throughout the Tenancy.
- 2.6 If a condition or covenant in this Lease requires the Tenant not to do something, it is a breach of the condition or covenant to allow somebody else to do it.
- 2.7 References to statutory provisions, acts or EC Directives include (except where expressly stated to the contrary) references to:
- 2.7.1 any changes to them, including any extension, consolidation, replacement or re-enactment (before or after the date of this Lease);
  - 2.7.2 any previous statutory provisions, acts or EC Directives that they have replaced or changed; and
  - 2.7.3 any regulation, instrument or order or other subordinate legislation made under them.
- 2.8 If a party consists of more than one person, the covenants and obligations which that party undertakes can be enforced against them all jointly or against each individually.
- 2.9 For so long as the Reversion forms part of The Crown Estate, a covenant by (or implied by) the Landlord is made (or implied) by the Commissioners acting in exercise of the powers of the Crown Estate Act 1961. No covenants, agreements or obligations are given by Her Majesty or anyone who reigns after Her. No liability is imposed on Her Majesty or anyone who reigns after Her nor on the Commissioners in any personal or private capacity. With effect from the date that the Reversion ceases to form part of The Crown Estate, those covenants are deemed to be made by the person subsequently entitled to the Reversion. All liability of the Commissioners for those covenants will stop from that date.
- 2.10 If any provision of this Lease is held to be invalid or unenforceable by any court or other competent authority, all its other provisions will remain in full force.
- 2.11 This Lease does not confer on any person or party (except the parties to it) rights under the Contracts (Rights of Third Parties) Act 1999.

- 2.12 References to rights of access to the Property by the Landlord are extended to anybody authorised by the Landlord.
- 2.13 The word "assignment" includes a legally binding contract for assignment.
- 2.14 The words "include" and "including" are deemed to be followed by the words "but not limited to".
- 2.15 Any consent or approval to be given by the Landlord is not effective unless it is given in writing.
- 2.16 References to "works" are to structures, works or erections of any description including building and engineering works, Conduits and floating jetties and pontoons secured to the foreshore and/or riverbed.

## PART TWO: GRANT

### **3 Grant**

- 3.1 The Landlord lets the Property to the Tenant with no title guarantee for the Term.
- 3.2 The following rights are excepted from this Lease and reserved in favour of the Landlord and anybody authorised by the Landlord:
- 3.2.1 the right to the free and uninterrupted use of any Conduit now or after the date of this Lease on, under or through the Property;
- 3.2.2 the right to enter the Property at all reasonable times after at least two days' notice (or immediately in an emergency) with tools and equipment (if appropriate):
- (a) to inspect the Property to find out whether the Tenant is complying with this Lease or to view its state and condition or to make surveys or carry out tests;
- (b) to connect into, inspect, clean, maintain, repair, renew, alter, divert or remove any Conduit or install any new Conduit;
- but the person entering must cause as little damage and disturbance as reasonably practicable and make good as soon as practicable any damage to the Property so caused;
- 3.2.3 all mines, minerals and mineral substances within the Property together with the right to enter on the Property to work, get and carry them away as fully and effectively as if this Lease had not been granted; and
- 3.2.4 all game and wildfowl and the right to enter the Property and to shoot, kill and carry them away.
- 3.3 The Property is let subject to:
- 3.3.1 the public rights of navigation and fishing;
- 3.3.2 all [unregistered interests that override first registration under Schedule 1 Land Registration Act 2002 and any interests that fall within section 11(4)(c) of that Act] [unregistered interests that override registered dispositions under Schedule 3 Land Registration Act 2002]; and
- 3.3.3 all rights, easements, quasi-easements, restrictions, covenants and liabilities which affect the Property.



- 3.4 Subject to the Tenant paying the Rents and complying with its obligations in this Lease and without limiting the operation by the Government of the United Kingdom of its powers, the Tenant will have quiet enjoyment of the Property without interruption by the Landlord or any person claiming under rights granted by the Landlord.

#### **4 Rents**

The rents payable under this Lease are:

- 4.1 the Principal Rent;
- 4.2 the Turnover Rent;
- 4.3 any VAT on any sums due under this Lease; and
- 4.4 any other sums payable under this Lease.

#### **PART THREE: TENANT'S COVENANTS WITH THE LANDLORD**

#### **5 Payment of the Rents**

- 5.1 The Tenant will pay without deduction or set-off (whether legal or equitable) the Principal Rent by yearly payments in advance and the Turnover Rent in arrears each on the Rent Payment Date and each together with VAT if it applies. Payment is to be made by standing order (from a bank in the United Kingdom) or by any other method reasonably required by the Landlord. The first payment of the Principal Rent (for the period beginning on 1 January 2010 and ending on 31 December 2010) is due on the date of this Lease.
- 5.2 The Tenant will pay the Rents (except the Principal Rent and Turnover Rent) on demand.

#### **6 Outgoings**

- 6.1 The Tenant will pay and indemnify the Landlord against all rates, taxes, assessments, impositions, duties, charges and outgoings payable at any time during the Tenancy by the owner or occupier of (or otherwise due in respect of) the Property. The Tenant will not be responsible for any taxes (except VAT) payable by the Landlord on the Principal Rent or Turnover Rent and any taxes on any dealing by the Landlord with its interest in the Reversion.
- 6.2 The Tenant will pay and indemnify the Landlord against all VAT charged on:
- 6.2.1 the Rents; or
- 6.2.2 any other taxable supply received by the Tenant under this Lease.

#### **7 Works and materials**

- 7.1 The Tenant will not construct, erect or place any works on, in or under the Property
- 7.2 The Tenant will not dig, extract or remove any sand, stone, beach shingle or other minerals or mineral substances from the Property. The Tenant will use its best endeavours to prevent the illegal or unauthorised removal of them.
- 7.3 The Tenant will not cause waste, spoil or destruction on, in or under the Property.

## **8 Repair**

- 8.1 The Tenant will keep all works from time to time on the Premises in good and substantial repair and condition.
- 8.2 The Tenant will keep the Property at all times clean and tidy, free from debris (including dead fish and animals), pollution and contamination and in a condition that poses no threat to human health or the environment.

## **9 User**

- 9.1 The Tenant may use the Property for the purpose of mooring boats and for no other purpose.
- 9.2 The Tenant will not use the Property in a way that is or may cause a nuisance, disturbance or damage to the Landlord or any other person. If a nuisance occurs, the Tenant will immediately take all necessary action to stop it.
- 9.3 The Tenant will not use the Property in a way that causes pollution or harm to human health or the environment.
- 9.4 The Tenant will not use the Property:
- 9.4.1 for anything that is dangerous, noisy or offensive; or
- 9.4.2 for anything illegal or immoral.

## **10 Alienation**

- 10.1 The Tenant will not:
- 10.1.1 hold the Property expressly or impliedly on trust for another person;
- 10.1.2 part with or share possession or occupation of the Property;
- 10.1.3 allow anyone except the Tenant or its officers and employees to occupy the Property;
- 10.1.4 underlet the whole or a part of the Property; nor
- 10.1.5 grant any licence in respect of the whole or a part of the Property.

## **11 Legal Obligations**

- 11.1 The Tenant will observe and comply with all Legal Obligations at its own expense. It will not do or fail to do anything in relation to the Property or its occupation or use which would make the Landlord incur any liability under a Legal Obligation whether for penalties, damages, compensation, costs or otherwise.
- 11.2 If a Legal Obligation requires work to be done, the Tenant will do it straight away. In any event, the Tenant will notify the Landlord of any steps it has taken in connection with a Legal Obligation and give the Landlord copies of all relevant documents.

## **12 Encroachments**

The Tenant will not permit and will use its best endeavours (whether required by the Landlord or not) to prevent any encroachment or easement being made or acquired and any unlawful acts occurring in, on or against the Property. If anybody else tries to make or acquire any encroachment or easement, the Tenant will notify the Landlord immediately on becoming aware of it and will not admit or acknowledge it in any way.

### **13 Vehicles**

The Tenant will not drive any mechanically propelled vehicle on the Property other than Ministry of Defence vehicles and vehicles belonging to the Tenant or to boat owners with moorings within the Property under licence from the Tenant and being used to cross the foreshore for purposes necessary in connection with such moorings.

### **14 Bait digging**

The Tenant will not carry out any bait digging on the Property. The Tenant will use its best endeavours to prevent unlawful bait digging on the Property

### **15 Byelaws**

The Tenant will consult with the Landlord in writing before making any byelaws or regulations in respect of the use and enjoyment of the Premises.

### **16 Exercise of the Landlord's rights**

The Tenant will permit the Landlord (and anybody authorised by the Landlord) to exercise any of the rights specified in clause 3.2 at all times during the Tenancy without interruption or interference. The Tenant will not make any claim against the Landlord (or authorised persons) for exercising or potentially exercising such rights.

### **17 Costs**

17.1 The Tenant will pay the Landlord on demand and on a full indemnity basis all costs, charges and expenses properly incurred by the Landlord relating to:

17.1.1 an application for the Landlord's consent (whether or not the consent is given or the application is withdrawn);

17.1.2 preparing (or in contemplation of the preparation of) a schedule of dilapidations to be served during the Tenancy or after the End of the Tenancy;

17.1.3 preparing (or in contemplation of the preparation of) a notice under a provision of this Lease or under section 146 or 147 Law of Property Act 1925 and proceedings under those sections even if forfeiture is avoided except by relief granted by the court;

17.1.4 recovering (or the attempted recovery of) arrears of Rents or other sums payable under this Lease;

17.1.5 enforcing any Tenant's covenant under this Lease;

17.1.6 stopping a nuisance that the Tenant fails to stop;

17.1.7 any inspection of the Property (where the inspection reveals a breach of the Tenant's covenants under this Lease) and the supervision of any work required to remedy any breach of the Tenant's covenants under this Lease; or

### **18 Interest**

The Tenant will pay the Landlord Interest at the Interest Rate:

18.1 on any Principal Rent or Turnover Rent and any VAT due on either of them that is not paid to the Landlord on the date it is due (whether payment is formally demanded or not) and on any other sum that is not paid to the Landlord by the later of:

- 18.1.1 the date it is due; and
- 18.1.2 the date 14 days after a demand for payment is made;
- 18.2 on any Principal Rent, Turnover Rent, VAT or other sum that the Landlord properly refuses to accept because of an existing breach of covenant.

## **19 Indemnity**

- 19.1 The Tenant is responsible for and will indemnify and keep the Landlord indemnified against all actions, proceedings, claims and demands brought or made and all losses, damages, costs, expenses and liabilities incurred, suffered or arising, directly or indirectly, from or otherwise connected with:
  - 19.1.1 the occupation and use of the Property;
  - 19.1.2 the state of repair and condition during the Tenancy of the Property;
  - 19.1.3 any act, neglect or default of the Tenant or anyone deriving title through the Tenant or anyone at the Property with the express or implied authority of either of them;
  - 19.1.4 any breach of any covenant or other provision of this Lease to be observed and performed by the Tenant;
  - 19.1.5 (without prejudice to clause 21) the presence or state of repair and condition of any works (whether authorised or unauthorised) at the Property remaining after the End of the Tenancy; or
  - 19.1.6 the removal, destruction, storage, sale or disposal of any works or chattels under clause 21.2
- 19.2 The Landlord may bring claims under the indemnity in this clause 19 both before and after the End of the Tenancy. The Landlord may bring a claim under this clause 19 regardless of whether the subject matter of the claim was brought or made against the Landlord or suffered or incurred by the Landlord before or after the End of the Tenancy.

## **20 Land registration**

If it is necessary to register the grant (or any transfer) of this Lease or any right relating to it under the Land Registration Act 2002, the Tenant will comply with the relevant registration requirements. In doing so, the Tenant will ensure that any requisitions raised by the Land Registry are dealt with promptly and properly. The Tenant will provide the Landlord's solicitors with an official copy of the relevant register showing compliance with these requirements as soon as practicable.

## **21 Yielding up**

- 21.1 At the End of the Tenancy, the Tenant will:
  - 21.1.1 (unless the Landlord otherwise agrees in writing) remove any works on in or under the Property and restore their site to its former or proper condition to the Landlord's satisfaction;
  - 21.1.2 return the Property to the Landlord:
    - (a) with vacant possession;
    - (b) in the state and condition it should be in if the Tenant complies with its covenants and obligations under this Lease; and

21.1.3 apply to the Land Registry:

- (a) to close the title of this Lease (if it is registered); and
- (b) to remove any notice of this Lease and the rights granted or reserved by it from any registered title of the Landlord,

and ensure that any requisitions raised by the Land Registry in connection with that application are dealt with promptly and properly and keep the Landlord informed of the progress and completion of its application.

21.2 If after the End of the Tenancy any works or chattels remain on the Property, the Landlord may in its absolute discretion remove, destroy, sell, store or dispose of them without having any liability whatsoever to the Tenant.

## **22 Insurance**

22.1 The Tenant will effect and maintain with a reputable insurer third party and public liability insurance in respect of the Property in the sum of £5,000,000, or any other sum that the Landlord may from time to time reasonably require, for each and every claim and on terms approved by the Landlord (such approval not to be unreasonably withheld).

22.2 In relation to the insurance effected and maintained under clause 22.1:

22.2.1 the Tenant will produce to the Landlord upon request from time to time a copy of or full details of the policy and evidence that it is in force;

22.2.2 the Tenant will comply with the insurers requirements and recommendations; and

22.2.3 the Tenant will not do or omit to do anything which may make any insurance policy void or voidable in whole or in part or increase the premium for any policy.

22.3 The Tenant will pay to the Landlord the premium and other costs which the Landlord may incur in effecting and maintaining any insurance which the Tenant fails to effect or maintain as required by this clause 22.

## **PART FOUR: TURNOVER RENT**

## **23 Definitions**

In this Part the following expressions have the following meanings:

**Gross Income** the aggregate of all sums of money and the amount or value of other consideration received or receivable by or on behalf of the Tenant in respect of or in any way relating to all goods sold leased hired or otherwise disposed of and all services sold or performed and all business of any nature whatever conducted by or on behalf of the Tenant at in from or on the Property including (without limitation):-

- (a) all premiums fees charges and other sums relating in any way to boats within the Property including, without limitation, those for mooring, storage, repair, handling, haul out or launch;
- (b) amounts received or receivable under any insurance policy relating to loss of Gross Income; and

- (c) all grants subsidies compensation and fees paid to the Tenant by any Authority in consideration of or to defray in whole or part the cost of the supply of goods or services at or from or in respect of the use of the Property

VAT imposed directly on the Tenant in respect of any supply of goods and services is excluded from the Gross Income but only to the extent that the VAT is actually paid or accounted for by the Tenant to HM Revenue and Customs

**Percentage**

50%

**Records**

all books and other documents or records, including computer tapes discs and other storage systems, cash register tapes, bank statements and any tax returns relating to VAT that are or ought in the reasonable opinion of the Landlord to be kept by the Tenant for the purpose of ascertaining and verifying the Gross Income or that are or may in the reasonable opinion of the Landlord be relevant for that purpose

**Turnover Certificate**

a certificate addressed to the Landlord certifying the amount of the Gross Income during the relevant Turnover Period together with a detailed breakdown (in a form approved by the Landlord acting reasonably) of that Gross Income and signed by a professionally qualified accountant whom the Tenant must appoint

**Turnover Date**

1 January in 2013 and in each following year

**Turnover Period**

any period of 12 months starting on and including a Turnover Date during the Term provided that:

(a) the first Turnover Period will be the period commencing on (and including) 1 January 2013; and

(b) the last Turnover Period will be the period commencing on (and including) the last Turnover Date falling within the Term up to the date of the End of the Term

**24 Turnover Rent**

24.1 For each Turnover Period the Turnover Rent will be the sum equal to the Percentage of the Gross Income for that Turnover Period, less the amount of the Principal Rent paid for that Turnover Period

24.2 The Tenant will pay the Turnover Rent for each Turnover Period on the Turnover Payment Date immediately following the end of that Turnover Period

**25 Gross Income**

25.1 The Tenant will use all reasonable endeavours to maximise the Gross Income in each Turnover Period

25.2 Gross Income is to be treated as if it were receivable by the Tenant notwithstanding any assignment charge or other divestment of income from the Property made by the Tenant

25.3 Gross Income is receivable by the Tenant at the time it is payable

- 25.4 For the purposes of this clause "the Tenant" means the Tenant and any other person in occupation of the Property other than a licensee under a Permitted Licence for which the Landlord's consent is not required (the sums payable under the Permitted Licence forming part of the Gross Income)

## **26 Turnover Certificate**

- 26.1 On or before each Turnover Payment Date the Tenant will deliver to the Landlord a Turnover Certificate for the Turnover Period which has just expired together with a calculation of the Rent for that Turnover Period
- 26.2 The Tenant covenants with the Landlord that each Turnover Certificate will be true and accurate in all respects
- 26.3 If the Tenant fails to deliver a Turnover Certificate for any Turnover Period to the Landlord in accordance with this clause 26 the Tenant will on the Turnover Payment Date immediately following the end of that Turnover Period pay to the Landlord on account of the Turnover Rent in respect of that Turnover Period an amount equal to the Turnover Rent due in respect of the previous Turnover Period
- 26.4 If on receipt of a Turnover Certificate it appears that the amount paid on account by the Tenant under clause 26.3 exceeds or is less than the Turnover Rent for the relevant Turnover Period then the Landlord will immediately repay the amount of the excess to the Tenant or (as the case may be) the Tenant will immediately pay the amount of the shortfall to the Landlord
- 26.5 The Turnover Rent for any Turnover Period is due on the Turnover Payment Date whether or not it has by then been quantified and the Turnover Rent or any part of it (including without limitation, any payments to the Landlord under clauses 26.4 or 27.3) which is not paid on the Turnover Payment Date will be paid with interest from the Turnover Payment Date to the date of payment in accordance with clause 18

## **27 Records and audit**

- 27.1 The Tenant will maintain the Records fully and accurately throughout the Term and will make them available for inspection at all reasonable times by the Landlord or any person authorised by the Landlord
- 27.2 The Landlord may at its discretion cause an audit of the Records to be made by a professionally qualified accountant appointed by the Landlord and if it is established by such audit that the Gross Income for any Turnover Period has been understated by more than 2% then the costs of the audit will be paid by the Tenant on demand
- 27.3 If it appears from any such inspection or audit or from any other circumstances that any further Turnover Rent is payable then such further Turnover Rent will be paid by the Tenant on written demand

## **28 Dispute relating to Gross or Assumed Income or Turnover Rent**

If any dispute arises between the parties as to the amount of the Gross Income or the amount of the Turnover Rent then either the Landlord or the Tenant may by notice to the other require the matter to be determined by Arbitration

## **29 Miscellaneous**

The provisions of this Part Four are to continue to apply notwithstanding the expiry or sooner determination of the Term but only in respect of the period down to the date of expiry or determination

PART FIVE: INDEXATION

## 30 Definitions

30.1 In this Part the following expressions have the following meanings:

**Index** the all items Index of Retail Prices published by the Office for National Statistics or any successor ministry, department or agency and any substitute index for it under clause 32

**Indexation Formula** The following formula:

$$PR \times \frac{A}{B}$$

where:

PR = the amount of the Principal Rent reserved immediately before the relevant Review Date

A = the value of the Index for the month that is two months earlier than the relevant Review Date

B = at the first Review Date, the value of the Index for the month that is two months earlier than the Term Start Date and at each subsequent Review Date, the value of the Index for the month that is two months earlier than the previous Review Date

**Restrictions** restrictions imposed by an Authority which operate to impose any limitation in relation to the review of rent or the collection of any increase in rent

**Review Dates** 1 January 2013 and each subsequent third anniversary of that date and any other date that becomes a Review Date under clause 35

**Review Surveyor** a chartered surveyor having at least 10 years' experience in assessing the rental value of premises similar to the Property and acting as an independent expert

**Valuation Office** the Valuation Office Agency of HM Revenue & Customs

30.2 In this Part time is not of the essence except where specified.

## 31 Review of Rent

With effect from and including each Review Date, the Principal Rent will be the greater of:

31.1.1 the amount reserved immediately before that Review Date; and

31.1.2 the figure calculated in accordance with the Indexation Formula.

## 32 Index

32.1 In the Indexation Formula, if the reference base used to compile the Index changes after B is published but before A is published, A will be adjusted so that it is the figure that would have been shown in the Index if the change had not been made.

32.2 If it becomes impossible to calculate the Revised Rent for any Review Period by reference to the Index because of a change in the methods used to calculate the



Index after the date of this Lease or for any other reason, then another index will be substituted by agreement between the Landlord and the Tenant.

- 32.3 If the Landlord and the Tenant do not agree on an adjusted or substitute index, either party may at any time before or after the relevant Review Date (but not later than the next succeeding Review Date) require the adjusted or substitute index to be determined by the Valuation Office.

### **33 Procedure**

- 33.1 Where the Valuation Office is required to determine the adjusted or substitute index (as the case may be):

- 33.1.1 the Valuation Office will act as if it were an independent expert;
- 33.1.2 the Landlord and the Tenant will have the opportunity to make representations to the Valuation Office;
- 33.1.3 the Landlord and the Tenant will take all steps reasonably necessary to enable the Valuation Office to determine the adjusted or substitute index (as the case may be) with all reasonable despatch and will use their best endeavours to procure that it is so determined;
- 33.1.4 the determination of the Valuation Office will be final and binding;
- 33.1.5 the Landlord and the Tenant will each bear their own costs of the determination; and
- 33.1.6 the costs of the Valuation Office will be shared equally between the Landlord and the Tenant.

- 33.2 If the Valuation Office declines to act, ceases to exist or otherwise cannot complete the determination of the adjusted or substitute index (as the case may be), either the Landlord or the Tenant may by notice to the other require the adjusted or substitute index (as the case may be) to be determined by the Review Surveyor.

- 33.3 If the Landlord and the Tenant do not agree on the joint appointment of the Review Surveyor, either party may apply to the then President of the Royal Institution of Chartered Surveyors before or after the relevant Review Date but no later than the next Review Date to make such appointment.

- 33.4 If the Review Surveyor:

- 33.4.1 will give the Landlord and the Tenant an opportunity to make representations to him and his decision will be final and binding; and
- 33.4.2 his fees and expenses (including those relating to his appointment) will be met by the Landlord and the Tenant equally.

- 33.5 Within three months of his appointment or within any longer period agreed by the Landlord, the Review Surveyor will give the Landlord and the Tenant notice of the amount of the adjusted or substitute index (as the case may be) as determined by him together with a statement of reasons. If he does not or cannot complete his duties in accordance with his appointment, then the Landlord and the Tenant may agree on or either of them may apply for the appointment of another Review Surveyor whenever necessary in accordance with this clause.

- 33.6 If within 21 days of demand a party fails to pay its share of the Valuation Office's or Review Surveyor's fees or expenses, the other party may pay them. The party that failed to pay will then repay the amount so paid on demand.

### **34 Delayed Review**

If the Principal Rent payable with effect from a Review Date is not agreed or determined before that Review Date:

- 34.1 the Tenant will continue to pay the Principal Rent at the rate reserved immediately before that Review Date (the "Interim Rent"); and
- 34.2 if the Principal Rent once agreed or determined exceeds the Interim Rent, then on or before the day (the "Due Date") 14 days after the Principal Rent is agreed or determined, the Tenant will pay the Landlord an amount equal to the total of the sums by which each instalment of the Principal Rent would have exceeded each instalment of the Interim Rent had the Principal Rent been agreed or determined by that Review Date (but with credit given for the amount of any Turnover Rent paid which, by virtue of the increase in the Principal Rent, would not have been payable had the amount of the Principal Rent been determined as at the Review Date. Interest is also payable at 3% below the Interest Rate on each of those sums from and including the date it would have been due up to and including the day before the Due Date or (if earlier) the date of payment.

### **35 Restrictions**

If Restrictions are in force at a Review Date, the Landlord may (whether or not the Principal Rent has been agreed or determined with effect from that Review Date) give notice to the Tenant within 28 days after that Review Date (time being of the essence) postponing the rent review due on that Review Date (the "Original Review Date") until such later date (the "Postponed Review Date") as the Landlord later specifies by at least three months' notice (but which may not be later than the next following Review Date). In that event:

- 35.1 the Principal Rent reserved immediately before the Original Review Date will (despite any review that may have taken place as at the Original Review Date) continue to be the Principal Rent payable until increased at the Postponed Review Date or (as the case may be) at a subsequent Review Date;
- 35.2 subject to clause 32.1 at the postponed review A in the Indexation Formula will be the value of the Index for the month that is two months earlier than the Postponed Review Date but B will remain the same as it would have been at a review on the Original Review Date; and
- 35.3 at the postponed review the relevant Review Date in the definition of Open Market Rent will be the Postponed Review Date.

### **36 Memoranda**

Whenever the Principal Rent is agreed or determined in accordance with this Part, memoranda in such form as the Landlord reasonably requires will (if the Landlord so requires) be signed by or on behalf of the Landlord and the Tenant and annexed to this Lease and its counterpart. The Landlord and the Tenant will bear their own costs for this.

PART SIX: FORFEITURE

### **37 Re-entry**

At any time after any of the following events, the Landlord may re-enter the Property. The Tenancy will then end (but without affecting the Landlord's rights and remedies for any prior claim or breach of covenant and the continuing operation of clause 19). The events are:

- 37.1 if any Rent remains unpaid 21 days after it is due (whether formally demanded or not); or

- 37.2 if the Tenant does not comply with any of the covenants and conditions in this Lease.

#### PART SEVEN: EXTRACTION

### **38 Extraction**

- 38.1 If part of the Property is required by any person for works or if rights over part of the Property are required by any person in connection with works, the Landlord may end the Tenancy so far as it relates to that part of the Property by giving to the Tenant at least one month's written notice.
- 38.2 Any notice under this clause 38 will specify the part of the Property in respect of which the Tenancy is to end.
- 38.3 The Landlord may exercise its rights under this clause 38 in respect of more than one part of the Property and more than once.
- 38.4 The End of the Tenancy in respect of a part of the Property by notice under this clause 38 will:
- 38.4.1 not affect the Landlord's rights and remedies for any prior claim or breach of covenant in respect of that part of the Property;
  - 38.4.2 be without prejudice to the continuation of the Tenancy in respect of the remainder of the Property;
  - 38.4.3 be without payment of any compensation; and
  - 38.4.4 be without reduction of the Principal Rent if this Lease is ended in respect of less than 10% of the area of the Property (as originally leased) but there will be a proportionate reduction of the Principal Rent if this Lease is ended in respect of 10% or more of the area of the Property (as originally leased).
- 38.5 The Tenant will sign any forms and documents and take any other steps that the Landlord may reasonably require to procure the removal of the part of the Property in respect of which any notice is given under clause 38 from:
- 38.5.1 the registered title of this Lease at the Land Registry; and
  - 38.5.2 any entries at the Land Registry in respect of this Lease made against any registered title of the Landlord.

#### PART EIGHT: MISCELLANEOUS PROVISIONS

### **39 User**

The Landlord gives no assurance that the Property may lawfully be used for any purpose permitted by this Lease.

### **40 Easements**

Section 62 Law of Property Act 1925 does not apply to this Lease. Nothing contained or implied in this Lease operates expressly or implicitly to confer on or grant to the Tenant any easement, right, privilege, liberty or advantage except those expressly granted by this Lease. The Tenant will not during the Tenancy acquire or become entitled to any extra rights over any adjoining property.

## **41 Covenants**

- 41.1 This Lease does not give the Tenant the benefit of or the right to enforce or prevent the release or modification of any covenant, agreement or condition relating to other property.
- 41.2 Each covenant in this Lease by the Tenant remains in full force at law and in equity despite any waiver or release, temporary or permanent, revocable or irrevocable, of any other covenants in this Lease or of any covenant affecting other property.

## **42 Liability**

The Landlord is not responsible (as far as it is lawful to exclude such responsibility) for any accident, injury, loss or damage:

- 42.1 to the Tenant or to anyone in the Property with the Tenant's express or implied authority or to its or their property;
- 42.2 due to any act, neglect or default of any other tenant of the Landlord or any officer, employee or agent of the Landlord or of any other person in the Property.

## **43 Compensation**

Any statutory right of the Tenant to claim compensation from the Landlord on vacating the Property or otherwise is excluded to the extent that the law allows.

## **44 Data Protection Act 1998**

For the purposes of the Data Protection Act 1998 or otherwise, the Tenant:

- 44.1 acknowledges that information relating to this Lease will be held on computer and other filing systems by the Landlord or the Landlord's managing agent (if any) for general administration and/or enforcement of this Lease;
- 44.2 agrees to such information being used for such purposes and being disclosed to third parties so far only as is necessary in connection with:
- 44.2.1 the management of the Landlord's interest in the insurance and/or maintenance of the Property;
- 44.2.2 checking the creditworthiness of the Tenant; or
- 44.2.3 the disposal of the Property.

## **45 Notices**

Section 196 Law of Property Act 1925 applies to any notices required or authorised to be given under this Lease. While the Property forms part of The Crown Estate, any notice to be given to the Landlord under this Lease must be addressed so as to be delivered to the Commissioners at their office at the time of giving the notice.

## **46 Jurisdiction**

This Lease is governed by and is to be construed in all respects in accordance with the Laws of England and Wales and the Premises are to be regarded (if not actually the case) as if they were incorporated in the body of a county of England and Wales.

## **47 Limitation of liability**

The Landlord will not be liable to the Tenant for the consequences of any failure by the Tenant to register or note at the Land Registry:

- 47.1 this Lease where required by the Land Registration Act 2002;
- 47.2 any of the rights granted or reserved by this Lease at the Land Registry either by notice or by way of caution against first registration, whichever is appropriate.
- 47.3 There is no agreement for lease to which this Lease gives effect.

This Lease is executed as a deed by the parties and is delivered and takes effect on the date at the beginning of this Lease.

THE OFFICIAL SEAL of THE CROWN )  
ESTATE COMMISSIONERS placed here )  
was confirmed as authentic by:- )

SIGNED BY )  
and )  
two members of )  
INSTOW PARISH COUNCIL )  
pursuant to a resolution of the Council )  
passed on the        day of        2009 )  
in the presence of:- )