A Guide to
Taking a Lease of
Commercial Property
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This Guide has been prepared by Steeles Law Solicitors Limited’s commercial property department to provide an overview of the procedures relating to commercial leases.

What is a Lease?

A Lease is a written agreement whereby one person; company; charity; or other legal entity (called the Landlord) gives another person; company; charity; or other legal entity (called the Tenant) the exclusive right to occupy and use the Landlord’s property for a set period of time (called the Term) in return for the Tenant making payments to the Landlord (called the Rent).

A Lease will set out the obligations of both the Landlord and the Tenant and what rights each party has in relation to the property. A Lease should reflect the circumstances and needs of the parties when the Lease is granted.

A Lease can run to 50 pages or more. All Leases contain mainly standardised provisions, the most important of which are highlighted in Appendix 1 to this Guide.

The Lease Negotiation

At the initial stage of the transaction, the parties will agree the fundamental terms of the deal and record them in a document known as the Heads of Terms. A model Heads of Terms is annexed at Appendix 2 of this Guide for your information. It is important that the Heads of Terms reflect the terms agreed by the parties, as they will form the basis of the Lease that is drafted by the Landlord’s solicitors.

A draft Lease will be prepared by the Landlord’s solicitors. You should then seek to agree with the Landlord’s solicitors any amendments to the draft Lease which you feel would safeguard or improve your position. The likelihood of being able to agree amendments will depend on a variety of factors, the most important of which are:

1. The strengths of each party in the open market e.g. if the property is in a particularly desirable location, or being let at a particularly attractive Rent, the Landlord will be better able to resist the Tenant’s proposed amendments.
2. Whether the Lease is of part of a larger property (a building, or an estate), so that it needs to be compatible with the leases of other parts.

3. Whether the Landlord himself holds a Lease, so that he is, in fact, granting a sublease/underlease (the terms are interchangeable) and whether the form of sublease/underlease is curtailed by the terms of his Lease (which is called the headlease).

4. The speed at which you wish to move in.

In the course of negotiating the wording of the Lease, it may be useful to have one or more meetings with the Landlord, his solicitors and (usually) agents. This speeds up the negotiation and allows both sides to understand the other’s concerns. However, lengthy meetings will, of course, increase legal costs for both sides.

Once the wording of the Lease is agreed, the Landlord’s solicitor will then produce copies for signature by the Landlord and the Tenant (called engrossments). One copy is signed by the Landlord and subsequently kept by the Tenant (this is called the original). The other copy is signed by the Tenant and subsequently kept by the Landlord (this is called the counterpart).

When the Landlord and Tenant have both signed the Lease and the Landlord has received any sums payable on completion under the Lease, the lawyers (if they are being used) will date both copies, indicating that the document has become legally binding. This is called completion.

**Title Investigations, Searches and Enquiries**

As well as negotiating the Lease, you should:

1. Check that the Landlord is the legal owner of the property, entitled to grant the Lease, and that no other person has the benefit of rights or restrictions over the property which would impact on you. This is called investigating title.

2. Check whether the property has the necessary planning permission to allow you to carry on your business there.
3. Raise enquiries with the Landlord’s solicitors to find out more about the property.

4. Carry out a Local Authority Search to ensure that there is nothing affecting the property which could adversely impact on your use of it. This search will: detail any planning issues affecting the property; advise whether the roads servicing the property are maintained at the public expense; reveal plans for any proposed road and railways in close proximity to the property; detail any proposed traffic schemes; show any financial charges registered against the property; set out the location of any nearby conservation areas; and detail any tree preservation orders and areas of special architectural or historical interests, all of which could restrict or add to the cost of any building work.

5. Carry out a Water and Drainage Search, which will provide information concerning: the sewers and drains, including whether the drainage system is private or maintained at public expense; the location of public water mains and sewers in the area; the existence of any agreements or consents; and whether the property has the benefit of a water meter.

6. Arrange for a “desktop” Environmental Search to be carried out, to try to identify the likelihood of any possible contamination of the property and surrounding land and reveal whether any further enquiries or surveys would be advisable. Unless you have negotiated something different, the Lease will make you responsible, either directly or indirectly, for the costs of complying with the environmental protection legislation affecting the property including, potentially, the costs of any clean up, which can be very expensive.

**Advisability of a Survey**

Unless you have negotiated something different, the Lease will make you responsible, either directly or indirectly, for the costs of repairing and maintaining the property (for further information, see the section on Repairs in Appendix 1). It is therefore important for you to know whether there are any problems with the physical condition of the property that could necessitate large expenditure. The Landlord is not obliged to give you any assurances on this subject. It is therefore advisable to instruct a surveyor, who can survey the property and alert you to any problems at an early stage. The survey can ascertain whether there are any material defects affecting the structure of the property, which could either have an impact on your proposed use of the property or result in the Landlord having to carry out extensive repair work. This could prove to be expensive, as the Landlord is likely to recharge these costs to you via the service charge.
Stamp Duty Land Tax

On completion of the Lease you will be legally liable to pay Stamp Duty Land Tax. This is calculated on the basis of the net present value of the rents payable under the Lease, and on any premium. The Stamp Duty Land Tax due can be checked by reference to the following website: https://www.tax.service.gov.uk/calculate-stamp-duty-land-tax/#/intro.

Land Registry Fees

If the Lease is for a term of more than 7 years, it will need to be registered at the Land Registry. Land Registry fees are based on the amount of rent and any premium that will be payable. The fee due can be checked by reference to the following website: https://www.gov.uk/guidance/land-registry-registration-services-fees.

Code of Practice for Commercial Leases

The Code for Leasing Business Premises in England and Wales 2007 is the result of collaboration between commercial property professionals and industry bodies representing both owners (Landlords) and occupiers (Tenants). The Code aims to promote fairness in commercial leases, and recognises a need to increase awareness of property issues, especially among small businesses, ensuring that occupiers of business premises have the information necessary to negotiate the best deal available to them. The Code consists of three parts:

- 10 point requirement for Landlords in order for their leases to be Code-compliant
- An Occupier Guide
- A model Heads of Terms

The Code is voluntary so not all Landlords will choose to offer Code-compliant leases.

A copy of the model Heads of Terms is annexed at Appendix 2 of this Guide for your information and the Occupier Guide is annexed at Appendix 3.

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APPENDIX 1
Standard Lease Provisions

Term

A Lease is granted for a set period of time which is referred to as the Term. Commercial Leases are usually granted for a “fixed term” which means the Lease will start and end on the fixed dates specified in the Lease.

The Lease may, however, provide for either party to terminate the Lease at an earlier date; this right is referred to as a Break Right. A Break Right is sometimes linked to the rent review provisions within the Lease so that the Tenant has a right to terminate the Lease and limit its financial liabilities if the rent is unacceptable to the Tenant.

Under the Landlord and Tenant Act 1954 (LTA 1954), which is discussed in more detail below, the Tenant may have a statutory right to renew the Lease at the end of the Term. If a Lease contains provisions which mean that it is contracted out of the LTA 1954, the Lease will be brought to an end at the end of the Term and the property must be vacated immediately. If the Lease does not contain such provisions it will be a protected lease under the LTA 1954 and it will continue until it is terminated in accordance with the LTA 1954.

Area Demised

The Lease will refer to the property that the Tenant has been granted the right to occupy and use as the Demise. The provisions within the Lease relating to the extent of the Demise are important for the following reasons:

1. The Tenant is only responsible for its Demise;

2. The Tenant will not usually be required to repair or maintain any property outside of the Demise;

3. The Tenant will not be entitled to make any alterations or additions to any property which falls outside of the Demise; and

4. The Tenant will not have any rights over any property that does not fall within the Demise, unless provided for under the Lease.
Rent

The Lease will either: be granted at a substantial premium at the outset with only a small or nominal ground rent; or for no initial premium with more of a substantial rent.

Generally, the rent will be expressed as an annual sum which is to be paid in four equal installments in advance. The Lease usually requires the rent to be payable on the usual quarter days, which are 25 March, 24 June, 29 September and 25 December.

The Tenant may also have to pay VAT on rent, service charges and any outgoings such as rates, insurance premiums and utility bills.

Rent Review

The Lease usually provides for the rent to be increased during the Term. The rent may be increased in a variety of different ways:

1. There may be set dates within the Lease for the rent to be reviewed. The Lease will set out the procedure for the rent review. The rent may be reviewed to the market rate, in which case the reviews will usually take place every 3 to 5 years. Alternatively, the rent may be reviewed by reference to an index (usually the Retail Price Index (RPI)) or by reference to the open market valuation and if so, the review will commonly take place more frequently than every 5 years;

2. The Lease may set out pre-agreed increments by which the rent is to be increased each year; or

3. The Lease may provide for a set figure for rent and require the Tenant to pay an additional amount of rent relating to the Tenant’s business profits. This is known as turnover rent.

Service Charges

Service charges are commonly levied by the Landlord in order to recover from the Tenant its share of the cost of maintaining the building. If the Lease relates to part of the building, the Landlord would generally pay all of the outgoings relating to the service and maintenance of the building and then bill the Tenant for the Tenant’s share of those costs.
Where the Lease relates to the whole of the building, the Landlord is more likely to require the Tenant to be responsible for all of the outgoings associated with the building.

It is important to be aware of the following points in relation to service charges:

1. The costs the Landlord is entitled to include within the service charge within the Lease must be considered. The service charge will usually relate to all of the costs associated with running the property, including the cost of repairs, maintenance, insurance premiums, employing staff (such as caretakers and cleaners), utility bills and occasionally improvements and alterations.

2. It is common for the Landlord to also want to collect a sum to put towards any major expense in the future, or any unexpected costs which may arise. This is known as a reserve fund or a sinking fund.

3. The Lease will generally provide for a service charge year which will not necessarily be the same as the lease term year.

4. Service charge will generally be payable in four quarterly installments on the usual quarter days of 25 March, 24 June, 29 September and 25 December.

5. Since the Landlord will not know the amount of total service charge payable in any service charge year in advance, the Landlord or the Landlord’s managing agent will provide an estimate of the service charge and will provide the final service charge figures at the end of the service charge year.

6. At the end of the service charge year, the Tenant will usually either: be asked to account for any shortfall in the service charge; or the Lease should provide that the Tenant will be reimbursed for any overpayment directly; or that the overpayment is credited to the following service charge year.

**Rights, Exceptions and Reservations**

The Lease will usually provide for certain rights, exceptions and reservations, which are all important. Not only do they affect the Landlord’s freedom to deal with, or develop, neighbouring land but they also affect the Tenant’s use of the property and could have a considerable effect on the Tenant’s ability to carry out its business.
It is important that the Lease grants the Tenant certain **Rights** over any property, which is outside of the Tenant’s Demise but which the Tenant will require for its ordinary use of the property. For example, if a Tenant has a Lease over a floor in an office, it is important that the Lease grants the Tenant the right to use the stairs, lifts and entrance hall, so that the Tenant can access the office. The Tenant may also require a right to park vehicles over land belonging to the Landlord and a right to walk or drive over the Landlord’s land if there is no direct access from the building to the public highway.

The Lease will usually reserve certain rights to the Landlord over the property being demised to the Tenant. For example, the Lease may provide the Landlord with the right to enter onto the property demised to the Tenant to carry out repairs. These rights are usually referred to as **Reservations**.

The Lease will usually provide for certain rights to be excluded; these are referred to as **Exceptions**. Exceptions effectively limit the Tenant’s rights. For example, a Right to Light is often excluded within a Lease so that the Tenant is not able to raise any objection if the Landlord develops land in a way which obstructs light getting through to the Tenant’s windows.

**Insurance**

Either the Landlord or the Tenant will be obliged under the Lease to insure the property. It is important that the issue of insurance is expressly dealt with in the Lease so that there is no issue of double insurance, or the property not being insured at all.

Where the Tenant is required to insure the property, the Tenant must check whether the Lease has any specific requirements about the level of cover, the risk covered and the name of the insured parties.

Where the Landlord is required to insure the property, the Tenant will usually be required to pay a proportion of the premium payable for the insurance. The proportion of the insurance payable by the Tenant will usually relate to the area demised to the Tenant. There are various points the Tenant must take into consideration when the Landlord is insuring the property including the following:
1. Whether the level of cover is appropriate for the property;

2. Whether the risks covered under the insurance are appropriate for the property and the Tenant’s use of the property;

3. Whether there are any risks which are excluded under the policy. Generally damage caused by terrorism will be excluded. However, subsidence and flooding may also be excluded;

4. Whether the insurance is in the Landlord’s sole name or in joint names of the Landlord and the Tenant. If the Tenant has paid a premium for the Lease, the Tenant will have a capital interest in the property and therefore it is important that the Tenant makes sure that this interest is adequately protected by insurance. However, noting the Tenant’s interest on the Landlord’s policy does not give the Tenant any right to claim on the insurance;

5. Whether the Tenant is required to pay any excess on any insurance claim;

6. The terms of the insurance policy will need to be considered, in detail, as failure by the Tenant to comply with these terms could lead to the insurance policy being invalidated. The Landlord could have a potential claim against the Tenant for a breach of its obligations in the Lease not to invalidate any insurance cover in place;

7. Generally, the Tenant would have to disclose certain information about itself, its business and what is kept at the property;

8. Whether the Lease has adequate provisions in place in the event that the property is damaged and is not fit for occupation and use. In this situation, the rent should be suspended, therefore it must be considered whether the Lease provides for the rent to be suspended and if so, for what period the rent will be suspended;

9. Whether the Lease sets out what will happen if the Landlord cannot rebuild the property. Generally, the rent will cease to be payable for a certain period of time. This period should be the same as the period that the Landlord insures for loss of rent and there should be a right to terminate the Lease at the end of the period if the property is still unfit for occupation and use; and
10. Whether the Tenant will require any other insurance cover, for example, business interruption insurance cover to cover a move to temporary premises because the demised property has been damaged and cannot be occupied.

**Repairs**

The Lease will usually impose repairing obligations on the Tenant. In some situations, the Lease may also impose repairing obligations on the Landlord. The Tenant may be required to “keep” the property in repair, which means that the Tenant must put the property into a good state of repair, even if it was not in a good state of repair at the date of the Lease. Alternatively the Tenant may be required to repair the property in accordance with a schedule of condition, which will be attached to the Lease, which is a less onerous repairing obligation. There are various points to consider relating to repairs, including:

1. If the property being demised to the Tenant is part of a larger property, it is important to ensure that the Landlord is obliged to repair the parts of the property which are not being demised to the Tenant;

2. It is important to read the repairing obligations in conjunction with the insurance obligations. If the Landlord was responsible for insuring the property, the Lease should only require the Tenant to repair where the damage will not be covered by the Landlord’s insurance policy;

3. It is important to consider what happens in the event that: the property is not capable of repair; or if the Landlord decides not to repair; and whether the Tenant would be entitled to terminate the Lease in this situation.

**Alterations and Improvements**

The Lease may impose certain restrictions on the alterations and improvements the Tenant is entitled to make. Such provisions are included within a Lease to protect the Landlord from alterations which could damage the Landlord’s investment interest in the property. The Lease would usually also provide for the property to be reinstated to its original configuration before the end of the term.
The restrictions within a Lease on alterations and improvement should be appropriate to the type of property and the length of the term. If the Lease is a Lease of the whole of the property and is for a long term, there may only be a few restrictions.

However, if the Lease is a Lease of part of a larger property, or is a Lease for a short term, the Lease may absolutely prohibit structural alterations. It may, however, allow for internal alterations in certain circumstances, either without the Landlord’s consent or with the Landlord’s consent. In some situations, the Landlord cannot withhold its consent unreasonably. If the Tenant was to put up or move internal partitioning, this would generally be regarded as an internal alteration unless the Lease stated otherwise. Therefore, the Tenant must ensure that the Landlord’s consent is obtained prior to undertaking any alteration works at the property.

**Assignment and Underletting**

A Tenant may want to sell its interest in the Lease; this sale is referred to as an **Assignment**. A Tenant may want to keep its interest in the Lease but allow someone else to use part of the whole of the property by way of an underlease; this is referred to as an **Underletting**. However, there are likely to be a number of the restrictions associated with the assignment and underletting of the property which need to be considered in detail at the outset.

Most leases provide that the Landlord’s consent will need to be obtained before the grant of an assignment or an underlease. The Tenant must ensure that such a consent is obtained prior to granting an assignment or underlease. If a Tenant fails to obtain such consent, the Tenant will be in breach of its Lease, which could result in the Landlord bringing proceedings to bring the Lease to an end, or claiming damages from the Tenant. Unless a lease is for a very short term, we would not usually expect to see an absolute prohibition on assignments and underlettings in a lease, as this would mean that the Tenant is tied into the lease for the full term of the Lease.

If the Lease is regarded as a “New Lease” for the purposes of the Landlord and Tenant (Covenants) Act 1995 - most tenancies granted after 1 January 1996 will be regarded as a New Lease - an assignment which has not been authorised will be an “excluded” assignment for the purposes of the act. This means that the Seller will not be released from its liabilities under the Tenant’s covenants in the Lease until such time that an authorised assignment of the Lease takes place.
Use

Generally, a Lease will expressly set out how the property may be used which will usually be defined as the **Permitted Use**. The Lease will either express the permitted use positively i.e. “the Tenant shall use the property for [a permitted use]" or negatively i.e. “the Tenant shall not use the property otherwise than for [the permitted use].”

It is important for the Tenant to consider the following points in relation to the use:

- Whether there is planning permission in place for the actual use of the property. Irrespective of what the permitted use is under the Lease, if there has been a change of use of the property, new buildings have been constructed or existing buildings have been altered, planning permission is required; and

- Whether the Lease requires a Tenant to obtain the Landlord’s consent before applying for a change of use. The Tenant will often be required to obtain the Landlord’s consent, in addition to planning permission, as the authorised use of a property could affect the Landlord’s investment in the property and its rental value, which in turn affects the rent review.

Contracting Out of the LTA 1954

Under the LTA 1954, if a Lease is regarded as a business lease, the Tenant may have certain rights to renew the Lease at the end of the contractual term, or receive compensation from the Landlord for its inability to do so. The Tenant may therefore be required to agree to forgo the rights under the LTA 1954. If so, this would have to be authorised effectively and recorded within the Lease.

If the Lease is "contracted out" of the LTA 1954, the Lease will contain an express clause which confirms that sections 24-28 of the LTA 1954 have been excluded. The Tenant will have no right to renew the Lease and it will terminate at the end of the term at which point the property must be vacated immediately.

If the Lease has not been “contracted out” of the LTA 1954, it will not contain such express provisions and will continue until the Lease has been properly terminated under the LTA 1954, or renewed. Until such point, the Tenant will have the right to remain in the property; this period of time is usually referred to as the “holding over” period.
## APPENDIX 2
### Model Heads of Terms

### Leasing Business Premises: Model Heads of Terms

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Note: These Model Heads of Terms follow a similar format to the Code for Leasing Business Premises: Landlord Code.

<table>
<thead>
<tr>
<th>1.0</th>
<th>Initial Information</th>
<th>Lease to be Code compliant: Yes / No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1</td>
<td>Property address</td>
<td>Detailed description (and Land Registry compliant plan if available) and measured area if relevant, e.g. for rent, service charge and rent reviews.</td>
</tr>
<tr>
<td>1.2</td>
<td>Landlord</td>
<td>(Registered no. [ ] ) Registered office: Correspondence address: Contact name: E-mail: Telephone: (Fax): Mobile:</td>
</tr>
<tr>
<td>1.3</td>
<td>Tenant</td>
<td>(Registered no. [ ] ) Registered office: Correspondence address: Contact name: E-mail: Telephone: (Fax): Mobile:</td>
</tr>
<tr>
<td>1.4</td>
<td>Rent</td>
<td>£ per annum exclusive of VAT. Payment dates monthly/quarterly. Is the property VAT elected?</td>
</tr>
<tr>
<td>1.5</td>
<td>Rent free period</td>
<td>(and other Incentives)</td>
</tr>
<tr>
<td>1.6</td>
<td>Type of lease</td>
<td>Head lease or sub lease.</td>
</tr>
<tr>
<td>1.7</td>
<td>Landlord’s Initial works (including timing)</td>
<td>Long stop date by which works must be done. Is the specification agreed/ if not who is providing it?</td>
</tr>
<tr>
<td>1.8</td>
<td>Tenant’s Initial works (including timing)</td>
<td></td>
</tr>
<tr>
<td>2.0</td>
<td>Guarantor/rent deposits</td>
<td>(a) Identity of guarantor (if any). (b) Rent deposit amount (if any).</td>
</tr>
<tr>
<td>3.0</td>
<td>Lease length, breaks, extensions and rights</td>
<td></td>
</tr>
<tr>
<td>3.1</td>
<td>Lease length and start date</td>
<td></td>
</tr>
<tr>
<td>3.2</td>
<td>Break clauses or renewal rights</td>
<td>(a) Notice periods for exercising? To be at least [ ]. (b) Any break clause payments?</td>
</tr>
<tr>
<td>3.3</td>
<td>1954 Act protection</td>
<td>Does the lease have 1954 Act protection?</td>
</tr>
</tbody>
</table>
3.4 Rights

eg. Satellite dish, air conditioning platforms, remote storage areas, signage, etc. Any rights of access, servicing, wayleaves or other matters incl. fire escape.
For car parking – state number and attach plan if relevant.

4.0 Rent reviews

(a) Type (market rent, fixed increases, link to an index?).
(b) How often do reviews occur?
(c) For market rent, are there any unusual disregards or assumptions. Arbitrator/Expert.

5.0 Assignment and subletting

See check box

<table>
<thead>
<tr>
<th>Assignment</th>
<th>Prohibited</th>
<th>If not prohibited is CNUW</th>
<th>Permitted without consent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assignment of whole</td>
<td>Yes/No</td>
<td>Yes/No</td>
<td>Yes/No</td>
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<tr>
<td>Sub-Lease whole</td>
<td>Yes/No</td>
<td>Yes/No</td>
<td>Yes/No</td>
</tr>
<tr>
<td>Sub-Lease part</td>
<td>Yes/No</td>
<td>Yes/No</td>
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</tr>
<tr>
<td>Sub-sub-lease</td>
<td>Yes/No</td>
<td>Yes/No</td>
<td>Yes/No</td>
</tr>
<tr>
<td>Concession</td>
<td>Yes/No</td>
<td>Yes/No</td>
<td>Yes/No</td>
</tr>
<tr>
<td>Group sharing</td>
<td>Yes/No</td>
<td>Yes/No</td>
<td>Yes/No</td>
</tr>
</tbody>
</table>

For sub lettings consider: Maximum number of occupiers, limitations Code requires sublettings to be at market rent. CNUW = Consent not to be unreasonably withheld.

6.0 Services and service charge

Provide estimate or actual budgets and confirm proportion. Any special provisions, eg. exclusions special services, e.g. enhanced security? Any unusual provisions, e.g. sinking fund?

Note: Owners and Occupiers should be aware of the RICS 2006 Code of Practice on Service Charges in Commercial Property and seek to observe its guidance in drafting new leases and on renewals.

7.0 Repairing obligations

7.1 FRI and schedule of condition

(a) is it full repairing; if so
(b) is it the Landlord who repairs and recovers the cost, or the Tenant who repairs at its own cost?;
(c) is there to be a schedule of condition?

7.2 Collateral warranties

Who is giving them?

8.0 Alterations and use

8.1 Alterations

See check box

<table>
<thead>
<tr>
<th>Alterations</th>
<th>Prohibited</th>
<th>If not prohibited is CNUW</th>
<th>Permitted without consent</th>
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<tbody>
<tr>
<td>External</td>
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<td>Yes/No</td>
<td>Yes/No</td>
</tr>
<tr>
<td>External structural</td>
<td>Yes/No</td>
<td>Yes/No</td>
<td>Yes/No</td>
</tr>
<tr>
<td>Internal structural</td>
<td>Yes/No</td>
<td>Yes/No</td>
<td>Yes/No</td>
</tr>
<tr>
<td>Internal non structural</td>
<td>Yes/No</td>
<td>Yes/No</td>
<td>Yes/No</td>
</tr>
</tbody>
</table>

Note: Is an agreed form of licence to be attached to lease?

8.2 Permitted use

Specify use and any ability to change use.

9.0 Insurance

(a) Landlord insures and recovers the premium from the Tenant.
(b) Will terrorism be an insured risk?
(c) Mutual break clause on:
   - Insured damage?
   - Uninsured damage?
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>10.0</td>
<td><strong>Lease management</strong></td>
</tr>
<tr>
<td>10.1</td>
<td><strong>Dilapidations</strong> e.g. Dilapidations to be scheduled and given to the Tenant six months before the termination date.</td>
</tr>
<tr>
<td>11.0</td>
<td><strong>Other issues</strong></td>
</tr>
<tr>
<td>11.1</td>
<td><strong>Rates and utilities</strong> Confirm that the Tenant is responsible. Tenant must check actual amount with Local Authority and utility provider.</td>
</tr>
<tr>
<td>11.2</td>
<td><strong>Legal costs</strong> Each party to pay own including costs of approval for tenant’s fit out.</td>
</tr>
<tr>
<td>11.5</td>
<td><strong>Landlord’s solicitors</strong> [ ] Company address: Contact name: E-mail: Telephone: (Fax:) Mobile:</td>
</tr>
<tr>
<td>11.6</td>
<td><strong>Tenant’s solicitors</strong> [ ] Company address: Contact name: E-mail: Telephone: (Fax:) Mobile:</td>
</tr>
<tr>
<td>11.7</td>
<td><strong>Timing and other matters</strong> e.g. Exclusivity period, target for exchange?</td>
</tr>
<tr>
<td>11.8</td>
<td><strong>No contract</strong> These Heads of Terms are subject to contract.</td>
</tr>
<tr>
<td>Section</td>
<td>Details</td>
</tr>
<tr>
<td>---------</td>
<td>---------</td>
</tr>
<tr>
<td>11.9 Landlord’s agent(s)</td>
<td>[ ] (Registered no. [ ]&lt;br&gt;Registered office:&lt;br&gt;Correspondence address:&lt;br&gt;Contact name:&lt;br&gt;E-mail:&lt;br&gt;Telephone:&lt;br&gt;Mobile:&lt;br&gt;)(Fax)</td>
</tr>
<tr>
<td>11.10 Tenant’s agent(s)</td>
<td>[ ] (Registered no. [ ]&lt;br&gt;Registered office:&lt;br&gt;Correspondence address:&lt;br&gt;Contact name:&lt;br&gt;E-mail:&lt;br&gt;Telephone:&lt;br&gt;Mobile:&lt;br&gt;)(Fax)</td>
</tr>
</tbody>
</table>
APPENDIX 3
Occupier Guide

Leasing Business Premises: Occupier Guide

This document is one of three component parts of the Code for Leasing Business Premises in England and Wales 2007

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Introduction

A business lease is a legally binding contract between the legal owner (Landlord) and the occupier (Tenant). Failure by either party to comply with the terms of the agreement could result in court action.

The 2007 Code for Leasing Business Premises (the Lease Code) provides a framework within which a prospective tenant can reasonably expect a landlord to operate. As a prospective tenant, you should not assume that a landlord complies with the Lease Code. The Lease Code does not provide all of the protection you need for your business in leasing premises.

Sometimes the Landlord is also the tenant of another owner. This may restrict the flexibility of terms the Landlord can offer. The Landlord should always state in advance if this is so and provide a copy of the current lease.

If it is proposed to buy an existing lease (assignment) from someone else, be aware that, though parts of this Occupier Guide may help in interpreting some of the terms of the lease, there may be many additional liabilities. Professional advice from a qualified surveyor and a lawyer should be sought.

In this document the following terms have been used:

Landlord This is the owner of the property or the person owning an existing lease of the property

Tenant This is the occupier of the property or the person paying rent to a landlord (this Occupier Guide assumes the tenant will be you)

Heads of Terms This is a summary of the agreement between the parties and is used to instruct lawyers to produce the formal lease. Both the lease and the Heads of Terms should comply with the recommendations of the Lease Code but the Heads of Terms will be superseded once the lease has been granted.

For more information on the Lease Code see Useful Links.

1 Lease negotiations

You should expect the Landlord to make very clear exactly what you are being asked to agree.

You should be able to understand the total extent and duration of the cost and liability you will be taking on if you sign a lease based on the terms being offered by the Landlord.

Tip 1

Make sure you understand every term and condition in the offer including the total cost until the lease ends and ask the Landlord or the Landlord’s representative to confirm in writing that the offer meets the Lease Code.

You should know from the offer exactly what the property is.

Tip 2

Make sure the offer clearly shows the extent of the property, with the boundaries clearly marked on plan and the floor area noted, together with all means of access, any access or areas you must share with other occupiers, any limitation of hours of use, any restrictions in the type of use, any legal or planning limitations or obligations that come with the property.

You should also remember that, however good your relationship is or seems to be with the Landlord, the Landlord may sell to another party; the terms you agree and the lease you take on must reflect everything you rely on to conduct and safeguard your business.
Tip 3
Make sure the offer sets out clearly who the Landlord is, together with any superior landlords, and assume that any Landlord will sell his interest to someone else and that you will have to deal with the new owner.

You should request alternative terms if you are not happy with the initial terms of the Landlord’s offer, always bearing in mind that any variation (such as lease length, rent review terms – including frequency and basis – break options, etc) may change the level of rent or other terms.

Tip 4
Request written responses from the Landlord, where you expect to need to rely on them. Check that all the things which are important to you and your business have been accurately written down in the Heads of Terms and documented in the lease.

If the Landlord demands a deposit, you should make sure you understand the conditions under which it is held and the basis on which it will be returned to you. You should remember that this is YOUR money that the Landlord is holding as a protection against any failure on your part.

Tip 6
Keep thinking of the deposit as your money and demand that interest on it is accrued at a fair rate. Ask the Landlord to make sure it is held in an account that belongs to you (escrow or stakeholder account) in case the Landlord becomes insolvent. Throughout the term of the lease, make sure you obtain statements from the Landlord to confirm that the money is still in the account and that all interest earned has been paid to you or, if required by the lease, has been held on your behalf within the account. Check that your deposit will be transferred to the new Landlord if the Landlord sells the property to another owner.

Tip 7
Make sure you know when and how you can get your deposit back, such as when you no longer have an interest or have satisfied agreed conditions.

If you are asked to give a personal guarantee, you should avoid using your home as security. You should be able to understand both when and how the Landlord may call on your guarantee, and also what the guarantee would actually cover.

Tip 8
Think of any guarantee as it will be called on the first day of the lease; what would be the personal consequences for you? Can you afford it?

2 Financial matters, rent deposits and guarantees
The Landlord should provide full details of your expected costs involved in leasing the property. This should include all personal or company guarantees, security deposits or other bank guarantees.

Not all costs will be fixed at the time of agreeing the lease. You should expect the Landlord to explain how any costs are calculated so that you can understand the risks and make sure you can afford all of the costs of leasing the property.

Tip 5
It may be helpful to use a checklist (such as that set out below) so that you can ask the Landlord to be explicit about costs and obligations in the lease.

<table>
<thead>
<tr>
<th>Cost Item</th>
<th>Who pays?</th>
<th>How much?</th>
<th>How often?</th>
<th>What is the occupier’s cost each year?</th>
<th>If this cost is not fixed, what does it depend on?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rent</td>
<td>e.g. Tenant</td>
<td></td>
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<tr>
<td>VAT</td>
<td></td>
<td></td>
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<td></td>
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<tr>
<td>Rates</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Service charges</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Insurance</td>
<td></td>
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<td></td>
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<tr>
<td>Utilities</td>
<td></td>
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</tr>
<tr>
<td>Repairs/Dilapidations</td>
<td></td>
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<td></td>
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<tr>
<td>Fitting out/Alterations</td>
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<tr>
<td>Total each year</td>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total lease cost</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
3 Rent review

Your lease may contain provisions allowing the Landlord to change the rent. The rules by which the rent can be changed should be clear and understandable. It should be arranged that the Landlord cannot simply impose a rental increase. The basis of rent review should be to the market rent unless clearly stated otherwise. If you agreed increases fixed to an index, the basis should be a published, independent, authoritative source.

If there is an open market rental value provision, it should specifically exclude (or disregard) any improvements you make, other than as part of an explicit obligation, or any value arising from your business. You should also make sure there are controls in the event of disagreement that will be referred to an independent expert or arbitrator to settle.

Tip 9
Check that you understand the basis on which the rent can be changed. Can the rent go down as well as up? You should see if the Landlord is prepared to allow upward or downward rent reviews and if not, you should consider asking for a break option exercisable only by the tenant.

Your lease should include a provision allowing you to serve a rent review notice on the Landlord. If the Landlord does not initiate the rent review, think very carefully before deciding not to serve notice on the Landlord as you may be responsible for paying interest on any increase in rent above the original rent from the appropriate rent review date until the review has been agreed.

Tip 10
Make sure that the interest rate on the difference is no higher than bank base rate. Try to introduce a provision whereby the Landlord forfeits interest on the difference if he/she does not initiate the rent review process prior to the review date.

Tip 11
Avoid strict time limits in the rent review clause (other than referred to in Tip 10) – these could result in you losing the ability to negotiate.

4 Subletting and assignment

Subletting (creating a new lease of all or part of the property)

If your lease allows subletting, you should understand any limitations (in terms of the amount of space, the use and the rent you can charge and the nature of the subtenant you can sublet to).

It is usual for Landlords to insist that subleases are granted outside the protection of the Landlord and Tenant Act 1954 and on similar terms to your lease.

Tip 12
Try to make sure you are NOT required to sublet at the same or higher rent than you pay. You should not be limited other than by reference to the market rent at the time of the subletting.
5 Lease length, break clauses and renewals

The Landlord should make clear the length of the lease, whether there are any rights to break the lease and whether you will be entitled to an extension of the lease on expiry (see section 11 below).

Make sure that the length of the lease is appropriate for your business needs; ask the Landlord to offer you a break option exercisable only by the tenant (this will be you unless you have assigned your lease) to give you the opportunity to cancel the lease at a time that suits your business.

A right to break should allow you to walk away from the lease at a given time after informing the Landlord in writing. This should be conditional only upon having paid the rent due under the lease and giving up occupation of the property, leaving behind no continuing subleases. You may have other liabilities to fulfill, but these should not be used to invalidate the right to break.

Tip 18
Be careful that it is only the principal rent and not any other sums (such as service charges) that must be paid in cleared funds before the break date.

When your lease ends, whether by expiry or by exercise of a break option, you will be liable to the Landlord for any sums due and for any repairs you should have carried out during the lease (clapitations).

Tip 19
When granting any subleases or in sharing possession with any suppliers or business partners, always make sure your agreement with them expires on a date before your right to break, AND that you have not given them any rights to stay in the property beyond the term of your agreement with them.

Be sure that you understand what notices you would be required to serve on the Landlord to end the lease, and how and when those should be served.

The Landlord and Tenant Act 1954 gives you the right to extend your tenancy when your lease runs out.

Unless both you and the Landlord have agreed (in the correct procedure) that the lease is to be excluded from the relevant sections of the Landlord and Tenant Act 1954, you will be entitled to renew your lease unless your Landlord can prove certain specific circumstances, which include redeveloping the property or occupying the space himself.

You should make sure you understand the options available to you when your lease expires. Take professional advice to make sure any notices are properly served and that your interests are protected.

Tip 20
Take professional advice at least six months before the end of the lease and on receipt of any notice from the Landlord under the Act.

6 Service charges

You should expect the Landlord to be explicit in his offer about any service charges, including how these costs are calculated, what they cover (and don’t include) and the extent to which you will be obliged to pay towards any capital improvements and long-term repairs or replacements of structure, fabric or machinery and equipment.

Tip 21
Ask the Landlord whether he complies with the Service Charge Code 2008, and ask for a clear estimate in writing of the likely service charge costs for each year of the lease term (to include any known or planned capital costs).

Tip 22
As you are likely to be responsible for the repairs to a proportionate part of the building you should satisfy yourself that there are no major repairs required at the beginning of your lease or that are likely shortly afterwards.

Tip 23
Make sure the Landlord cannot charge you a greater proportion of cost when he has other space vacant in the estate or building.

7 Repairs

UNLESS you specifically agree at the time of taking the lease to carry out works or to re-instate the property to its original state, check that the lease does not require you to put the property into a better condition than when you take the lease.

Tip 24
It is worthwhile either getting a formal photographic schedule of condition carried out by a firm of surveyors or taking plenty of photographs on or before taking the lease to record the condition at the beginning of the lease.

Tip 25
If you take the photographs yourself, make sure you get the photographs dated and witnessed and keep a set with your lease documents. If you produce your own video schedule of condition, send the Landlord a copy by Recorded Delivery Post.

You should bear in mind if you buy an existing lease (take an assignment of someone else’s lease), that the condition of the property when you take it may be poorer than it was at the beginning of the lease. You may be required to put the property back into its original condition so it is worth taking professional advice.
8 Alterations and changes of use

Your lease will limit the use of the property to a specified purpose (for example, R1 (Offices)). The lease will usually put the responsibility on you to check that your proposed use complies with any planning consent.

Tip 26
Make sure the Landlord provides you with all relevant information and, if possible, confirms to you that your use complies with his planning consent.

The lease may be quite restrictive in terms of any signage and any alterations you are permitted to make. Before you enter into the lease, you should make sure you are permitted to carry out any works your business needs.

Tip 27
Check what you need to do to the property in order to trade. Make sure the Landlord agrees in writing any changes you intend to make at the beginning of the lease period. Check whether you will be required to remove your alterations at the end of the lease.

The Landlord should be required to give his consent within a reasonable time period (say 21 days) and should not be able to refuse your proposed alterations without good reason.

Tip 28
Make sure your lease allows you to make non-structural alterations except where the Landlord can demonstrate it would affect the operation of the building. You should remember that you should notify the Landlord of any non-structural alterations you do make.

You should be aware of statutory requirements (such as Construction (Design and Management) Regulations 2007 (CDM) that you must comply with when carrying out any works or alterations to the Property. The CDM regulations require you to keep full and detailed formal records and your Landlord will require you to maintain these records throughout the lease.

9 Insurance

You may be required to reimburse the Landlord for his insurance premiums, and the Landlord should tell you what commission payments (if any) he receives.

Tip 29
Ask for a copy of the Landlord’s insurance policy and before signing the lease, check with alternative insurers that you are getting value for money for the given level of premium and that the insurance company is reputable. Ask him to confirm to you that he has no intention of changing the scope (and, therefore, the cost and nature) of the insurance cover.

The lease should provide for the Landlord’s policy to be used to repair or rebuild the property unless the insurance is invalidated by anything you do, in which case you may be liable for the reinstatement.

Tip 30
Remember to inform the Landlord and his insurer if you intend to change the way you use the property; let them know if you are storing any hazardous chemicals in the context of your business or if you propose to leave the property vacant and unattended at any time. Ask the Landlord to ensure inclusion of such activities in the insurance policy and to consult you over any changes in the insurance policy terms.

Tip 31
Check whether your alterations or improvements would be covered under the Landlord’s policy.

10 Tenant’s defaults and applications for consent

Tenant default

The lease forms a legal contract between you and your Landlord. Any breach of contract may have serious consequences and you should take care to understand your obligations and steps the Landlord may take against you and, if applicable, your guarantors, including Court action.

The laws relating to Landlord and Tenant relationships are complex and you should seek professional advice so you are clear on your obligations and rights.

A fair lease is one which allows you enough opportunity to fix any problems (without loss to the Landlord) before any legal action is taken.

Tip 32
Check that the Landlord must let you know you are in breach and give you a reasonable opportunity to remedy the breach before taking legal action against you.

You may find that you have failed or forgotten to carry out some obligations under your lease. It is usually best if you are able to carry out these obligations yourself. It may be better sometimes to approach the Landlord and negotiate a reasonable payment to have the Landlord carry out the obligations after your lease has expired.

Tip 33
Try to stay on good terms with the Landlord. This should help make any situation easier to handle and should allow you to run your business without unnecessary outside interruptions.

The remedy for a breach of your agreement may range from the Landlord sending in bailiffs, who may seize goods to the value of the breach, to the Landlord taking back the property from you (Forfeiture). You should note that this would not take away your liability to pay arrears of rent.
Tip 34
Make sure the ‘Forfeiture’ provisions in the lease are clear; they should allow you enough time to pay, and should allow you to restructure your business without necessarily making your lease vulnerable to forfeiture.

The Landlord may try to forfeit your lease by locking you out of the Property or by obtaining a court order. In either case you can apply to the Court to give you time to put matters right or to pay what you owe. Seek urgent professional advice in that situation.

New legislation often brings new obligations for owners and occupiers of property. Leases often require tenants to comply with statute at their own cost. You should ensure your obligations under the lease are proportionate to the length and terms of your lease and you should take professional advice and make your own estimate of any anticipated costs. You should research possible new Regulations that could affect your occupation and your business.

This provision should not be taken lightly and you should ensure that the Property is in compliance with existing regulations (for example, with Disability Discrimination Acts, Town and Country Planning Acts, Health & Safety Acts or Environmental Protection Acts) when you take the lease.

Tip 35
Ask the Landlord to confirm to you in writing that the Property complies with all regulations (some of which are “Statutory Instruments”) before entering into the lease.

Tip 36
Stay aware of potential new legislation and Regulations that will affect occupiers of business premises (many trade bodies and professional firms send out newsletters which can help to identify significant changes). Identify the costs and take professional advice to ensure you comply where you are obliged to by your lease.

Applications for consent
You will need to make applications to the Landlord during the lease, for example, if you intend to carry out alterations (see Section 8) or if you propose to sublease or assign your lease (see Section 4). The lease should specify that the Landlord may not unreasonably withhold or delay his consent.

The Landlord’s duty to respond only applies from when he has received from you adequate information about the proposed alterations or about the proposed assignee or subtenant and full details of the proposed transaction.

Tip 37
Check what information will be required before making an application and make sure you are able to give the Landlord full details. Ask the Landlord in advance what other consents he may have to get and ask for assurances that this will not add any further delay to the approval process.

Useful Links
www.leasingbusinesspremises.co.uk

Bills before Parliament
www.publications.parliament.uk/pa/pbills.htm

Building Regulations
www.communities.gov.uk/index.asp?id=11304274

Health and Safety Executive
www.hse.gov.uk

Service Charge Code
www.servicechargecode.co.uk

Town Planning (Link Site)
www.ukplanning.com/ukp/index.htm

Uniform Business Rates
www.voa.gov.uk

Organisations Endorsing the Code
Association of British Insurers
www.abi.org.uk

British Council for Offices
www.bco.org.uk

British Property Federation
www.bpf.org.uk

British Retail Consortium
www.brc.org.uk

Communities and Local Government
www.communities.gov.uk

Confederation of British Industry
www.cbi.org.uk

CoreNet Global
www.corenetglobal.org.uk

The Forum of Private Business
www.fpb.org.uk

Federation of Small Businesses
www.fsb.org.uk

Investment Property Forum
www.ipp.org.uk

The Law Society of England and Wales
www.lawsociety.org.uk

The Royal Institution of Chartered Surveyors
www.rics.org

Welsh Assembly Government
www.wales.gov.uk/index.htm
The Code for Leasing Business Premises is endorsed by the following organisations:

Association of British Insurers  www.abi.org.uk

British Council for Offices  www.bco.org.uk

British Property Federation  www.bpf.org.uk

British Retail Consortium  www.brc.org.uk

Confederation of British Industry  www.cbi.org.uk

Communities and Local Government  www.communities.gov.uk

CoreNet Global  www.corenetglobal.org.uk

The Forum of Private Business  www.fpb.org.uk

Federation of Small Businesses  www.sfb.org.uk

Investment Property Forum  www.ipf.org.uk

The Law Society  www.lawsociety.org.uk

The Royal Institution of Chartered Surveyors  www.rics.org
