1. Version 1.2 of the Model Commercial Lease
2. Introduction

* Since introducing version 1.1 of the MCL suite of documents on 24 June 2015, we have consulted on whether any changes to the leases are required to address issues arising from the Minimum Energy Efficiency Standards regulations (MEES). The general view of the consultees was that major changes were not required but that some useful changes could be made. These are explained below. In addition, we have received some additional comments on the terms of lease itself and therefore made some further changes. This note explains all of the changes that we have made.
* A new page headed “MCL Changes – July 2016” is now available on the Guidance section of the MCL website. On that page, as well as the text of this explanatory note, you will find a link to a PDF document that shows the changes (from version 1.1 to version 1.2) that have been made to the text of the lease for a shopping centre unit (MCL-RETAIL-07).

1. Minimum Energy Efficiency Standards

* We have not made any changes to the following provisions for the following reasons:
  + alterations clause – the clause already specifies that alterations must not have an adverse impact on the environmental performance of the property and it is thought that this is sufficient.
  + yielding up clause – we rejected a proposal that the tenant should return the premises to the landlord with no worse EPC rating than the rating at the date the lease was granted. If there is any change in the way in which the rating is calculated or if the standards change, this could lead to the tenant being required to improve the premises.
  + rent review – the rent review clause already includes an assumption that the premises can be lawfully let. The rent review surveyor cannot therefore assume that the premises are unlettable because they have an EPC rating below an E, if that happens to be the case.
  + service charge provisions – the service charge provisions are already wide enough to cover any environmental audits and energy improvement initiatives. There are no changes required to cover MEES.
* We have made the following changes:
  + the provisions relating to commissioning EPCs for the Premises have been moved from the sustainability schedule into clause 6 of the lease (general obligations) so that they are not inadvertently deleted if the parties decide not to include the sustainability schedule.
  + the landlord is given greater control over the production of EPCs. If the tenant has to obtain an EPC for an assignment or underletting or following completion of alterations to the premises, the landlord has the option to commission the EPC itself at the tenant’s cost. The landlord will have greater access to environmental data for the building and it is thought this will ensure that the energy assessor producing the EPC has full access to that data and produces a more accurate EPC. It also ensures that the same person carries out successive EPCs so that there is consistency between EPCs as well. This change has also been included in the licences for alterations in cases where a new EPC is required following completion of the alterations.
  + Where the premises have an EPC rating below an E, from April 2023 the landlord may be unable to continue to let them unless it has carried out any works that are required to improve the EPC rating. We have not included any obligation on the tenant to give consent to those works. Instead, we have given the tenant an absolute discretion to refuse to allow the works to be carried out. If the tenant refuses to allow the works to be carried out, the landlord can rely on the MEES exemption that applies where works cannot be carried out as a third party consent is unobtainable. If the tenant consents to the works (at the tenant’s absolute discretion – see above), we have given the landlord the right to enter to carry them out. If the works are carried out, a new provision in the reimbursement of costs clause requires the tenant to pay the costs of those works.
  + In addition to MEES, we have also widened the landlord’s right to enter so that it can carry out any works that may be required under the Heat Network (Metering and Billing) Regulations 2014.

1. Measurement of the premises

* The RICS has issued new Property Measurement guidelines that are mandatory from January 2016. These incorporate the International Property Measurement Standards for offices and, for other property, the 6th Edition of the Code of Measuring Practice. We have updated the definition of “Gross Internal Area” to take these changes into account. As International Property Measurement Standards are introduced for other asset classes such as retail and warehousing, current terms such as “gross internal area” may need to be replaced by the corresponding terms used by new standards – for offices, the equivalent to gross internal area is IPMS2 for Offices.

1. Rent Commencement Date

* The Rent Commencement Date can be changed where there is damage by an insured risk before the rent first becomes payable. We have therefore included a cross-reference to the provisions for changing the Rent Commencement Date its definition.

1. Handing back the premises at the end of the term

* To make it clear that reinstatement can include putting back items that were originally in the Premises but removed when alterations were carried out, we have added an obligation in clause 4.14.2 to restore the premises to “the same **configuration**, state and condition as they were in before the items removed were originally installed.”

1. Rights granted to the tenant

* We have made a small change to the right granted in Schedule 1 to connect to and use Conducting Media in paragraph 1. The right is now limited to the Conducting Media **intended to serve the Premises**.

1. List of services for which the landlord can charge the tenant

* In all of the leases that contain service charge provisions, paragraph 2.2.1 in Part 2 of the service charge schedule (Schedule 3) allows the landlord to employ agents, contractors and others as the landlord decides. However, the list of services that can be charged to the tenant in Part 3 of the Schedule does not directly allow recovery of the costs that the landlord incurs if it does so. We have therefore added a new paragraph 12 in Part 3 of the Schedule that allows the landlord to recover the costs of employing or procuring agents, contractors and others as the landlord decides in connection with the services.
* In those leases that contain both a building service charge and an estate service charge, a corresponding change has been made in Part 5 of the Schedule as a new paragraph 10.
* For leases of part of a building and a unit in a shopping centre, we have included a reference to the “Building Management Systems” and “Centre Management Systems” in paragraph 9 of Part 3 of the Schedule and added “traffic control systems” to the relevant definition.

1. Changes to insurance provisions

* References to insuring with a “reputable insurance company” have been changed to a “reputable insurer” in the insurance schedule (Schedule 4 in MCL-RETAIL-07) so that insurance through underwriters at Lloyds is not precluded. A corresponding change has been made in the tenant’s works schedule (Schedule 6 in MCL-RETAIL-07)
* We have made a small but important change to the rent suspension clause. The change applies where the rent suspension begins during the rent free period. When the premises are reinstated and fit for occupation and use, the main rent does not become payable immediately. The tenant should still receive the benefit of the unused balance of the rent free period. We have amended the wording of paragraph 3.3 to ensure that this is the effect of the paragraph.
* If the rent suspension provisions are triggered, the landlord is obliged to repay a due proportion of the main rent and service charge paid in advance that relates to the period after the date of damage or destruction. We have added wording to make it clear that the payment has to be made “as soon as reasonably practicable” in paragraph 3.4 of Schedule 4.
* In the termination provisions in paragraph 4.1.2 we have added the words “and ready to receive tenant’s fitting-out works” after the words “fit for occupation and use and accessible” so that the wording is consistent with the wording used in paragraph 3.2.1.
* References in the insurance schedule to “the Tenant’s fitting out works” in paragraphs 3.2.1 and 4.1.2 have been changed to “tenant’s fitting out works”.

1. Standardising the obligations of the parties to do things

* When the Model Commercial Lease was being drafted, the intention was that instead of obligations to use “all reasonable endeavours” or “reasonable endeavours”, the parties would have to take “reasonable steps” to fulfil their obligations.
* Inevitably, and despite taking reasonable steps to ensure it did not happen, a handful of instances remained where “all reasonable steps” or “reasonable endeavours” or “all reasonable endeavours” continued to be used. In version 1.2, we have standardised these references. The changes are set out below. Unless otherwise stated, references to clause numbers are to those in the retail lease of a shopping centre unit (MCL-RETAIL-07).
* Changes to all leases
  + In clause 4.25.1, the tenant has to take reasonable steps to register the lease at the Land Registry.
  + In clause 4.25.2, the tenant has to take reasonable steps to close the leasehold title following the end of the lease.
* Changes to leases with service charge provisions
  + These changes apply to all leases with the exception of MCL-OFFICE-01, MCL-LOGISTICS-01, MCL-RETAIL-01 and MCL-FOODDRINK-01
  + In Schedule 3, Part 1, paragraph 2.1, the landlord must take reasonable steps to provide the service charge statement to the tenant.
  + In Schedule 3, Part 2, paragraph 2.1.2, the landlord must take reasonable steps to restore the supply of services following any interruption to the supply.
  + In Schedule 3, Part 2, paragraph 2, the landlord must take reasonable steps to notify the tenant in advance of the service charge budget.
* Changes to leases where the use is for logistics purposes
  + References in this section are to the lease of a unit on an estate for logistics purposes (MCL-LOGISTICS-02). The changes also apply to MCL-LOGISTICS-01.
  + In paragraph 2.2 of Schedule 9, the tenant must take reasonable steps to obtain renewals of environmental permits.
* Changes to leases where the use is for food and drink
  + References in this section are to the lease of a unit in a shopping centre for food and drink use (MCL-FOODDRINK-05). The changes apply to all of the MCL-FOODDRINK series of leases.
  + In Schedule 9, Part 1 paragraph 1.10, the tenant must take reasonable steps to prevent drunken or rowdy behaviour.
  + In Schedule 9, Part 1 paragraph 2.1.2, the tenant must take reasonable steps to prevent rats, pests or other vermin from entering into the drains.
  + In Schedule 9, Part 2 paragraph 1.2, the tenant must take reasonable steps to renew trade licences.
  + Corresponding changes have been made to the provisions in MCL-LEASECLAUSE-04 (the additional clauses for food and drink use).
* Changes to leases that contain a turnover rent
  + References in this section are to the lease of a unit in a shopping with a turnover rent (MCL-RETAIL-08). The changes also apply to MCL-RETAIL-04 and MCL-RETAIL-06
  + In Schedule 9 paragraph 8.1, the tenant must take reasonable steps to maintain active trade during the Centre Opening Hours.
  + A corresponding change has been made to the standalone turnover rent provisions in MCL-LEASECLAUSE-01.

Changes to guarantee provisions

* We have made a change to the wording in clause 7.2.1 (guarantor to take a new lease) to amend the references to “unimplemented Rent Review Date” so that the references are now to rent “review dates falling before the date of the new lease that have not been concluded by the date of the new lease” as a rent review may have been implemented but not concluded.
* Corresponding changes have been made to the guarantee provisions in the licences to assign.

Changes to forfeiture provisions

* The forfeiture provisions for tenants who are individuals have been updated to take into account the new procedure for an individual being adjudicated bankrupt by an adjudicator using the new on-line service.
* We have added as a ground for forfeiting the lease that the tenant, if an individual, applies for or becomes subject to a debt relief order or the Tenant proposes or becomes subject to a debt management plan.
* Where a third party presents a petition to have the tenant declared bankrupt, we have removed the wording about the petition not being dismissed where the tenant is an individual as, in practice, it is highly unusual for the petition to be dismissed.

Changes to the Works Schedule

* We have made some small changes to Schedule 6, the Schedule that sets out the tenant’s obligations in relation to works to the Premises.
* In paragraph 2.2.5, we now refer to the generic term “utility provider” rather than list of the relevant utility authorities.
* We have simplified the form of notice to be given by the tenant set out in Part 2 of the Schedule.

New forms of licences for alterations

We have expanded the suite of MCL document to include some additional licences for alterations. The new licences are:

* Licence for a tenant to carry out works outside the demise (MCL-LICALTER-04).
* Licence for an undertenant to carry out works outside the demise but within the demise of the headlease (MCL-LICALTER-05).
* Licence for an undertenant to carry out works outside the demise where the works are also outside the demise of the headlease (MCL-LICALTER-06).
* Licence to carry out works to combine premises held under two leases from the same landlord (MCL-LICALTER-07).
* Licence to carry out works to combine premises held under two leases from different landlords (MCL-LICALTER-08).
* Retrospective licence to carry out works (MCL-LICALTER-09).