

## MODEL COMMERCIAL LEASE

### Version 1.4

#### Summary of changes introduced on 24 April 2019

##### Introduction

The Model Commercial Lease (MCL) is being used by an increasing number of institutional landlords and law firms as their standard form of lease. Version 1.4 of the MCL includes a number of changes that reflect the comments we have received from new and existing users of the MCL as well as changes required to reflect changes in law and practice.

A redline version of the lease of part of an office building is available to download on the MCL website [here](#) [link]. This shows the detailed changes made to the lease. This summary highlights the key areas that we have changed and the reasons for those changes.

##### Services and service charges

There are a number of changes to the service charge provisions. These are:

- **References to the service charge code.** The 3rd edition of the service charge code of practice (2014) published by the Royal Institution of Chartered Surveyors has been superseded by the professional statement "Service Charges in Commercial Property" (1st Edition, September 2018). This new mandatory code applies in relation to service charges where the service charge year begins on or after 1 April 2019. The lease now refers to the professional statement.
- **Mandatory and discretionary services.** Previous versions of the lease did not sufficiently distinguish between services that the landlord **must** provide and services that the landlord **may** provide. The new version of the lease separates the services into mandatory and discretionary services. Which services appear in each category will need to be discussed between the landlord and its lawyers when the first draft of the lease is prepared. The division between mandatory and discretionary services in the template can be amended to suit the requirements of the landlord. For landlords who do not want to make a distinction between mandatory and discretionary services, the changes have been made in a way that enables all services to be mandatory without significant editing of the service charge provisions.
- **Landlord's costs.** Landlord's internal management costs and borrowing costs were listed as one of the services to be provided by the landlord. As these are not really services provided by the landlord, we have moved them into the main service charge provisions. They remain recoverable by the landlord as before.
- **Service charge statement.** We have added a new clause requiring the service charge statement to include a certificate that it gives a true and fair summary of the matters to which it relates.
- **Advance service charge payments.** We have added a new clause stating that advance service charge payments must be set against the tenant's liability for service charges at the end of the service charge year. Although this was implicit in the wording of the service charge provisions, we have added this to avoid repeated tenants' amendments to the service charge provisions.

##### Reinstatement at the end of the term

The reinstatement provisions in earlier versions of the MCL included the right for the tenant to serve notice on the landlord before the end of the term asking the landlord to specify which alterations and additions the tenant should reinstate. If the tenant served notice, the tenant would be obliged to reinstate only those items specified by the landlord. Although these provisions were compliant with the

Lease Code, they were unpopular with landlords and were frequently removed. In some cases, the reinstatement provisions were the reason that landlords would not use the MCL.

In light of landlords' concerns about the reinstatement provisions, we have taken the decision to remove the notice provisions. In the new version of the lease, the default position is that the tenant must reinstate all alterations and additions that it has made to the premises unless the parties otherwise agree that alterations and additions can remain at the end of the term.

### **Supply Runs**

To accommodate those buildings that have lateral runs for conducting media as well as service risers, we have added a new definition of "Supply Runs" that includes both. References in the lease to "service risers" have been updated to refer to the new defined term. The right to use service risers in Part 1 of Schedule 1 is now a right to use the supply runs. As the right is referred to in a number of places in the lease (including the new wayleave provisions referred to below), the right to use supply runs is no longer in square brackets.

### **Wayleaves**

On the letting of part of a building, estate or centre, tenants will need to install cabling for telecommunications that will run through the landlord's common parts. Telecommunications operators typically require a wayleave from the landlord before they will install the cabling required even though the tenant has the right to install cabling under the terms of the lease. To reflect this, we have included a new landlord's obligation to enter into a wayleave with a telecommunications operator where the tenant reasonably requests that the landlord does so.

### **CRC Energy Efficiency Scheme**

The CRC Energy Efficiency Scheme was abolished at the end of the 2018-19 compliance year, pursuant to the CRC Energy Efficiency Scheme (Revocation and Savings) Order 2018. We have therefore removed references to it from the lease.

### **Main Rent**

The amount of the main rent payable by the tenant was included in the rent payment provisions in the lease rather than in the definitions section. This made it difficult to find the main rent payable by the tenant, so we have amended the definition of Main Rent so that it now includes the initial amount of the main rent payable by the tenant.

### **Loss of rent insurance period**

We have removed the wording that gives the landlord absolute discretion to decide the period for which loss of rent insurance is taken out. As the provisions already specify that the period is between three and five years, giving the landlord an absolute discretion was thought to be unnecessary.

### **Tenant's works**

We have added an obligation on the tenant not to use prohibited materials (as defined) when carrying out works to the premises. We have used a generic definition of "prohibited materials" that does not refer to specific materials that must not be used as part of the tenant's works. Corresponding changes have been made to the licences to alter.

### **Avonridge wording**

We have added new "Avonridge" wording that states that the landlord will not be liable for any breach of the landlord's obligations in the lease after the landlord has disposed of its interest in the premises, building, estate or centre.

## **Interpretation provisions**

The interpretation provisions in the lease are an important part of its terms. They have grown piecemeal both before and after the original version of the lease was published. With the publication of the new version of the lease, we have taken the opportunity to consolidate the interpretation provisions so that they form a more coherent part of the lease. Except as noted below, there are no material changes to the text of the interpretation provisions themselves, only changes to the order in which they are set out. Three changes that we have made, however, are:

- including a clause stating that the landlord will be liable for breaches of the lease committed by persons acting under its control or with its express or implied authority . This mirrors the existing clause imposing liability on the tenant for breaches of the lease committed by persons acting under its control or with its express or implied authority ;
- updating the illegality and unenforceability clause at the end of the interpretation provisions; and
- including a statement that where the lease refers to the parties agreeing something between them, the provisions requiring the parties to act reasonably and properly when exercising rights and discretions do not apply.

A separate summary showing the changes to the interpretation provisions is available here [\[link\]](#).

Corresponding changes have been made to the other documents in the MCL suite that contain interpretation provisions.

## **Additional clauses**

The definition of “On-Account Payment” in the turnover rent clause (MCL-LEASECLAUSE-01) has been amended to require that the tenant make on-account payments at the previous year’s rate until the landlord notifies the tenant of the revised on-account payment. Corresponding changes have been made to leases that incorporate turnover rent provisions.

We have made a minor change to the index-linked rent review clause (MCL-LEASECLAUSE-03) to ensure that the compounded rent review refers consistently to the review of the notional rent. The worked examples have been updated and include an example of an annual rent review with a cap and collar.

The service charge cap clause (MCL-LEASECLAUSE-05) has been updated so that the indexation calculation operates on an annual basis in line with the indexation calculation used in the index-linked rent review.

We have added new versions of the other additional clauses. No changes have been made to the wording of the clauses but the styles and formatting have been updated to match the styles and formatting used in the remainder of the MCL documents.