

Model Commercial Lease

February 2024 Updates

Introduction

We have published version 1.7 of the Model Commercial Lease (MCL). This note highlights the changes that we have made.

Version 1.7 is a maintenance update. We have considered all comments received on the leases up to December 2023 and, where we have thought it appropriate to do so, made relevant changes in version 1.7. We have not adopted every suggested amendment, but the MCL Committee considered and discussed all of them in the light of feedback from users, new law, court decisions and developments in market practice. We thank everyone who has taken the time to send us feedback.

On 29 January 2024, the Better Buildings Partnership launched the updated version of the Green Lease Toolkit. The MCL Committee will consider the updated toolkit and any amendments required to the MCL in light of the new provisions included in the toolkit.

New logo and website update

It almost 10 years since the first versions of the MCL suite of documents were published. With this update, we have taken the opportunity to introduce a new MCL logo on the front of the documents and to refresh the website on which the MCL documents are hosted. The structure of the website has not changed substantially but it has been given a new visual style and should be more responsive. The MCL Committee would like to thank Tamsin Carter of Pynto Limited for her hard work behind the scenes to make this possible.

Changes to the terms of the lease

- The definition of “Ancillary Rent Commencement Date” now refers to the “first day of the Term” rather than the “first day of the Contractual Term”.
- The definition of “Rents” in leases that reserve a turnover rent now includes a reference to the Base Rent and Turnover Rent. We have made corresponding changes to the definition of “Hypothetical Lease” in the rent review schedule for these leases to reflect this change.
- We have updated the definition of “Service Charge Code” to refer to the “professional standard” in place of the “professional statement”.
- The interpretation provisions in clause 2.4 now include a statement that references to a person include “a natural person, corporate or unincorporated body (whether or not having separate legal personality)”.
- We have widened the third-party indemnity in clause 4.7 to include all third-party claims rather than only those in relation to personal injury or death, damage to any property and any infringement of any right.
- In clause 4.15 (Dealings with the Premises), we have corrected a typo in leases that reserve a turnover rent. Clause 4.15.3 now reads “...it has complied **with** its obligations...”
- In clause 4.19 (Comply with Acts), we have deleted clause 4.19.2 as it was considered that this was unnecessary given the terms of clause 4.19.1.
- In the leases that reserve a turnover rent, the provisions in clause 5.4 (repayment of rent) now refer to repayment of the Base Rent where this is payable.
- In leases of part of a building on an estate, we have updated clause 5.12 (Wayleaves) to refer to “either or both of the Building Common Parts and Estate Common Parts” rather than simply to the “Common Parts”.

- In the guarantee provisions in clause 7, there is an additional obligation on the guarantor to pay to the landlord any costs payable by the tenant under a court order that the tenant does not pay. This addresses the issue raised in *Kaushal Corp v O'Connor* [2023] EWHC 618 (KB) where the guarantor was not liable under its guarantee for unpaid court costs as there was no obligation in the lease on the tenant to pay those costs.
- In leases that reserve a turnover rent, the break clause (clause 8) now refers to the tenant paying Base Rent and Turnover Rent on or before the break date as a condition to the exercise of the break clause.
- We have reworded the terms of clause 8.2 in the break clause to include an obligation for immediate payment rather than an obligation to pay as soon as reasonably practicable and made other tidying amendments to the wording.
- In clause 8.1.2 of the break clause, we have corrected the reference to “Break date” so that is now reads “Break Date”.
- In paragraph (d) in the definition of the “Assumptions” in Schedule 2 (Rent Review), we now refer to “material and persistent” breach rather than “material or persistent”.
- Further to feedback from a number of prominent rent review surveyors, we have modified paragraph (e) of the definition of “Assumptions” in Schedule 2 (Rent Review). The changes to this assumption (being the assumption relating to the hypothetical tenant’s rent-free period for fitting out) are designed to achieve the following:
 - we are no longer linking the length of the rent-free period for fitting out to that which “might be negotiated in the open market”. In reality, no such negotiation takes place. Fitting-out periods themselves (in contrast to rent-free periods/other inducements granted to achieve headline rents) tend not to be negotiated in the open market. Hence, the rent-free period should simply reflect the time reasonably required by the willing tenant for the fitting out works to be carried out.
 - the drafting is now explicit that this rent-free period (given to the willing tenant for fitting out) has expired before the rent review date, with the willing tenant paying the reviewed rent from and including the rent review date. Surveyors tell us that this better aligns the clause to modern net effective rent valuations.
- We have amended paragraphs (e), (f) and (g) of the definition of “Hypothetical Lease” in Schedule 2 (Rent Review) to reflect the changes in paragraph (e) in the definition of “Assumptions”.
- In paragraph 2.1.5 of Part 2 of Schedule 3 (Service Charge), we now refer to the “Service Charge Code” being no longer “in effect” rather than no longer “published”.
- In the list of additional services that the landlord can charge to the tenant in Schedule 3 (Service Charge):
 - we now refer to “employing **such** agents, contractor or others...” in paragraph 5 of the list of additional services;
 - we have updated the “further services” provisions in paragraph 13 of the list of additional services; and
 - we have added a new provision to allow the landlord to recover costs and expenses incurred in relation to litigation in relation to rights, amenities and facilities used or enjoyed by tenants and occupiers. This is a new paragraph 14.

- In Schedule 6 (Works), if the tenant begins works, it must now complete them “as soon as reasonably practicable” rather than “diligently and without interruption” (see paragraph 2.2.1). We have made a corresponding change to the licences for alterations.
- In Schedule 7 (Sustainability) for leases of part of a building on an estate, paragraph 4.2 now refer to “Building Common Parts” rather than “Common Parts”.
- In leases that reserve a turnover rent, in Schedule 9 (Base Rent and Turnover Rent) paragraph 8.2 in the formula a “ – “ is replaced by an “ = “.
- In leases that reserve a turnover rent, we have amended the offer-back provisions in Schedule 10 (and made corresponding changes to the standalone offer-back clause - MCL-LEASECLAUSE-02) as follows:
 - We have updated the definition of “Disposal Period” so that it will start on the day following a “Rejection Notice” if the landlord decides not to accept the tenant’s offer to surrender the lease.
 - References to the price payable for the exercise of the offer back provisions are now expressly stated to be exclusive of VAT; There is now the option, should it be required, for the payment of a reverse premium on the exercise of the offer-back provisions (additional wording included in several places in Schedule 10); and
 - For clarity, we have added a payment provision in a new paragraph 6.6.
- We have updated references to the “Code for Leasing Business Premises” in the footnotes as this is now known as a “professional standard” with a publication date of “First Edition (February 2020)”.

Licences to assign

- The licences to assign a new tenancy included a definition of “Term” that we did not use in the licences. We have removed the definition.
- Where the interpretation provisions in the licences to assign (clause 2.4.5) refer to “this Licence states”, we have changed this to “this Licence specifies” to match the wording used in the leases.
- In LIC-ASSIGN-01 in clause 5.2.2 we have changed the wording from “is an authorised guarantee agreement” to “constitutes an authorised guarantee agreement” for consistency with the other licences to assign containing an authorised guarantee agreement.
- In LIC-ASSIGN-02:
 - The opening wording to clause 7.1 now correctly refers to “this Licence”.
 - In clause 8.3.2, the final line now reads “had there been” rather than “have there been”.
- In LIC-ASSIGN-03:
 - In the definition of “Guarantor”, the word “Guarantee” is now in lower case.
- In LIC-ASSIGN-05:
 - In the definition of “Guarantor”, the word “Guarantee” is now in lower case.
 - In the definition of “Lease”, the word “documents” is now in the singular.
 - In clause 4.3.3, the first life now refers to “Underlease” rather than “Lease”.

- In footnote 9, we have added the missing “is” in the sentence.
- In LIC-ASSIGN-06:
 - In clause 2.4.2, the words “[but references to the Town and Country Planning (Use Classes) Order 1987 are to that order as in force at the date of the Lease]” have been deleted.
 - In clause 4.2.2, “Tenant’s Solicitors” is now “Tenant’s solicitors”.
 - In clause 6.2.1, “the other parties” is now “any other party”.
 - There is a new clause 7.4 that includes the Contracts (Rights of Third Parties) Act wording that is in the other licences.

Licences to underlet

- In LIC-UNDER-01:
 - The definition of “Term” has been deleted as it was not used in the licence.
 - In clause 5.1, the opening wording reads “The Tenant must not...” rather than “The Tenant must to”.
 - The opening wording of clause 5.3.3 now reads “review the rent of the Underlease in compliance with its terms and”.
 - The old clauses 5.5.4 to 5.5.6 are now sub-clauses to clause 5.3.3 numbered (a), (b) and (c).
 - In what is now clause 5.5.4 (previously 5.5.7), the word “Approved” has been deleted.
 - In footnote 5 in the final line the word “Lease” is now “Underlease”.
- In LIC-UNDER-02:
 - In the definition of “Tenant’s Obligations”, the definition now refers to “tenant’s” rather than “tenant”.
 - The definition of “Term” has been deleted as it was not used in the licence.
 - In the definition of “Undertenant’s Obligations”, the definition now refers to “tenant’s” rather than “tenant”.
 - In the opening line of clause 2.8, “Undertenant” now reads “Sub-Undertenant”.
 - The opening wording of clause 5.3.3 now reads “review the rent of the Sub-Underlease in compliance with its terms and”.
 - The old clauses 5.5.4 to 5.5.6 are now sub-clauses to clause 5.3.3 numbered (a), (b) and (c).
 - In clause 6.2.2, “monies” is now “moneys” for consistency with the other licences.
 - Schedule 1 now has the title “Terms of the Sub-Underlease”.
 - In paragraph 9 of Schedule 1, in the second line “Sub-Underlet premises” is now “Sub-Underlet Premises”.

Licences for alterations

- In LIC-ALTER-01:
 - We have changed the definition of “Tenant’s Obligations” to match the definition used in the other forms of licence.
 - There is a new definition of “Term of the Lease” that we refer to in clause 7.1.3.
 - In clauses 4.1.5 and 6.2, “premium” is now “premiums”.
 - In clause 5.1.1, if the tenant begins works, it must now complete them “as soon as reasonably practicable” rather than “diligently and without interruption”.
- In LIC-ALTER-02:
 - We have changed the definitions of “Tenant’s Obligations” and “Undertenant’s Obligations” to match the definitions used in the other forms of licence.
 - There are new definitions of “Term of the Lease” and “Term of the Underlease” that we refer to in clause 7.1.3 and clause 7.2.
 - In clauses 4.1.5, 6.2 and 14.2, “premium” is now “premiums”.
 - In clause 5.1.1, if the undertenant begins works, it must now complete them “as soon as reasonably practicable” rather than “diligently and without interruption”.
 - In clause 11.2 in line 5, “incurs” is now “incur” and, in line 4, “Tenants” is now “Tenant’s”.
- In LIC-ALTER-04:
 - We have changed the definition of “Tenant’s Obligations” to match the definition used in the other forms of licence.
 - There is a new definition of “Term of the Lease” that we refer to in clause 4.6.1 and clause 8.1.3.
 - There is a new payment obligation in clause 4.8 for payment of the licence fee for the use of the additional rights granted by the licence.
 - In clauses 5.1.5 and 7.2, “premium” is now “premiums”.
 - In clause 6.1.1, if the tenant begins works, it must now complete them “as soon as reasonably practicable” rather than “diligently and without interruption”.
- In LIC-ALTER-05:
 - In the definition of “Consents” in line 3, we have added a missing “to” after the “[or,”
 - There is a new explanatory footnote to the definition of “Equipment Area”.
 - We have changed the definitions of “Tenant’s Obligations” and “Undertenant’s Obligations” to match the definitions used in the other forms of licence.
 - The definition of “Term of the lease” is now “Term of the Lease”.
 - At the end of the opening wording of clause 4.7, the word “Lease” is now “Underlease”.
 - In clause 5.1.5, clause 7.2 and clause 15.2, “premium” is now “premiums”.

- In clause 6.1.1, if the tenant begins works, it must now complete them “as soon as reasonably practicable” rather than “diligently and without interruption”.
- In clause 12.2 in line 4, “incurs” is now “incur” and, in line 5, “Tenants” is now “Tenant’s”.
- In LIC-ALTER-06:
 - In the definition of “Consents” in line 3, “Premises” now reads “Landlord’s Premises”.
 - There is a new explanatory footnote to the definition of “Equipment Area”.
 - We have changed the definitions of “Tenant’s Obligations” and “Undertenant’s Obligations” to match the definitions used in the other forms of licence.
 - The definition of “Term of the lease” is now “Term of the Lease”.
 - In clause 4.8 in line 4, “Undertenant” is now “Tenant”.
 - In the opening wording of clause 4.12, “Lease” is now “Underlease”.
 - In clause 5.1.5, clause 7.2 and clause 15.2, “premium” is now “premiums”.
 - In clause 6.1.1, if the tenant begins works, it must now complete them “as soon as reasonably practicable” rather than “diligently and without interruption”.
 - In clause 8.1.3, “term of the Underlease” is now “Term of the Underlease”.
 - In clause 8.2, “term of the Lease” is now “Term of the Lease”.
 - In Schedule 1 in the second example, “installation” is now “installation of”.
- In LIC-ALTER-07:
 - We have changed the definitions of “First Lease Obligations” and “Second Lease Obligations” to match the definition of “Tenant’s Obligations” in the other licences.
 - The word “as” has been deleted from the definition of “Insured Risks” for consistency with the definition as used in the other licences.
 - In the definition of “Reinstatement Event” in paragraphs (b) and (c), “term” now reads “Term”.
 - There are new definitions of “Term of the First Lease” and “Term of the Second Lease” that we refer to in in the definition of “Reinstatement Event”, clause 7.1.3, clause 11.3.1 and clause 11.3.2.
 - In clause 5.1.1, if the tenant begins works, it must now complete them “as soon as reasonably practicable” rather than “diligently and without interruption”.
- In LIC-ALTER-08:
 - In the definition of “Reinstatement Event” in paragraphs (b) and (c), “term” now reads “Term”.
 - There are new definitions of “Term of the First Lease” and “Term of the Second Lease” we refer to in in the definition of “Reinstatement Event”, clause 7.1.3, clause 11.3.1 and clause 11.3.2.
 - We have changed the definition of “Tenant’s Obligations” to match the definition used in the other forms of licence.

- In clause 4.1.6, clause 4.1.7, clause 7.2 and clause 15.2, “premium” is now “premiums”.
- In clause 5.1.1, if the tenant begins works, it must now complete them “as soon as reasonably practicable” rather than “diligently and without interruption”.
- In clause 13.2 in the first line, the word “and” is now “or”.
- In clause 14.1 in the second line, the “of” is now “or”.
- In LIC-ALTER-09:
 - We have changed the definition of “Tenant’s Obligations” to match the definition used in the other forms of licence.
 - There is a new definition of “Term of the Lease” that we refer to in clause 6.1.7.
 - In clause 6.2, “premium” is now “premiums”.

The MCL committee would like to express their thanks to Charlotte Dwight of Clarilis for her detailed comments on all of the licences that we have included above.

Rent Deposit Deed

We have added a definition of “Business Day”.

Offer back clause (MCL-LEASECLAUSE-02)

We have updated this clause to include the changes made to the offer back provisions contained in the turnover rent leases referred to above.

Index linked rent review (MCL-LEASECLAUSE-03)

- Changes in Part 1 (straight line rent review on an annual basis)
 - In the definition of “Base Rent”, we have amended paragraph (a) to replace “Term Start Date” with “first day of the Term”.
 - In paragraph 2.1.2 in the definition of “A”, the words “relevant review date” are now “Relevant Review Date”.
 - In paragraph 4.1.1, we have replaced the words “payable under” with “reserved by”.
- Changes in Part 2 (Compounded review on a five yearly basis)
 - In the definition of “Base Rent”, we have amended paragraph (a) to replace “Term Start Date” with “first day of the Term”.
 - In the definition of “Notional Rent” an option has been added to specify the amount of the Notional Rent for the period up to the first Notional Rent Review Date.
 - The definition of “Notional Rent Review Date” now reads “each anniversary of the first day of the Term”.
 - In paragraph 4.1.1, we have replaced the words “payable under” with “reserved by”.