

Dated

---

[LANDLORD]

and

[TENANT]

and

[GUARANTOR]

---

LEASE

Relating to premises known as Unit [NUMBER]

[CENTRE DETAILS]

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**SHOPPING CENTRE (RETAIL)**

(Open Market Rent/Exclusive of Service Charge)

[DRAFTING NOTE: THIS LEASE IS INTENDED TO BE USED AS A TEMPLATE. IT SHOULD BE ALTERED TO REFLECT ANY REQUIREMENTS THAT ARE SPECIFIC TO THE PROPERTY, PARTIES AND TERMS OF THE TRANSACTION. A COMPARISON AGAINST THIS TEMPLATE SHOULD BE SUPPLIED WHEN THE DRAFT LEASE IS FIRST SUBMITTED TO THE TENANT'S SOLICITORS.]

Model  
Commercial  
Lease

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## LAND REGISTRY PRESCRIBED CLAUSES

<b>LR1. Date of lease</b>	
<b>LR2. Title number(s)</b>	
<b>LR2.1 Landlord's title number(s)</b>	[TITLE NUMBER].
<b>LR2.2 Other title numbers</b>	[None.][TITLE NUMBER.]
<b>LR3. Parties to this lease</b>	
<b>Landlord</b>	[LANDLORD] (incorporated and registered in [England and Wales] [the United Kingdom] [COUNTRY] under company registration number [COMPANY NUMBER]), the registered office of which is at [ADDRESS].
<b>Tenant</b>	[TENANT] (incorporated and registered in [England and Wales] [the United Kingdom] [COUNTRY] under company registration number [COMPANY NUMBER]), the registered office of which is at [ADDRESS].
<b>[Guarantor</b>	[GUARANTOR] (incorporated and registered in [England and Wales] [the United Kingdom] [COUNTRY] under company registration number [COMPANY NUMBER]), the registered office of which is at [ADDRESS].]
<b>[[Description of party]</b>	[NAME] (incorporated and registered in [England and Wales] [the United Kingdom] [COUNTRY] under company registration number [COMPANY NUMBER]), the registered office of which is at [ADDRESS].]
<b>LR4. Property</b>	<b>In the case of a conflict between this clause and the remainder of this lease then, for the purposes of registration, this clause shall prevail.</b>  The property described as the "Premises" in <b>clause 1</b> of this Lease.
<b>LR5. Prescribed statements etc.</b>	None. <sup>1</sup>
<b>LR6. Term for which the Property is leased</b>	The term as specified in <b>clause 3.1</b> of this Lease.
<b>LR7. Premium</b>	[None.] [£ [AMOUNT] plus VAT of [AMOUNT].]
<b>LR8. Prohibitions or restrictions on disposing of this lease</b>	This Lease contains a provision that prohibits or restricts dispositions.
<b>LR9. Rights of acquisition etc.</b>	
<b>LR9.1 Tenant's contractual rights to renew this lease, to acquire the reversion or another</b>	None. <sup>2</sup>

<sup>1</sup> Note that a letting to a charity will require a prescribed statement under section 122 Charities Act 2011 (formerly section 37 Charities Act 1993).

<sup>2</sup> If the Tenant will have an option to renew the lease, refer to the Model Commercial Lease: Option to Renew clause (MCL-LEASECLAUSE-06) and include a cross-reference to the new clause here.

<b>lease of the Property, or to acquire an interest in other land</b>	
<b>LR9.2 Tenant's covenant to (or offer to) surrender this lease</b>	[None.] <sup>3</sup>
<b>LR9.3 Landlord's contractual rights to acquire this lease</b>	None.
<b>LR10. Restrictive covenants given in this lease by the Landlord in respect of land other than the Property</b>	[None.] <sup>4</sup>
<b>LR11. Easements</b>	
<b>LR11.1 Easements granted by this lease for the benefit of the Property</b>	As specified in this Lease at <b>Part 1 of Schedule 1.</b>
<b>LR11.2 Easements granted or reserved by this lease over the Property for the benefit of other property</b>	As specified in this Lease at <b>Part 2 of Schedule 1.</b>
<b>LR12. Estate rentcharge burdening the Property</b>	None.
<b>LR13. Application for standard form of restriction</b>	<p>[None.][The Parties to this lease apply to enter the following standard form of restriction [against the title of the Property] or [against title number [NUMBER]].]</p> <p><b>[NB 1: if a restriction is required to be entered against a title number other than the Property, remember to put any relevant title number in LR2.2.]</b></p> <p><b>[NB 2: this clause only deals with standard form restrictions. If a non-standard restriction is required, do not refer to it in this clause and remember to make a separate application to register any such restriction in form RX1.]</b></p> <p><i>LR NOTE: Set out the full text of the standard form of restriction and the title against which it is to be entered. If you wish to apply for more than one standard form of restriction use this clause to apply for each of them, tell us who is applying against which title and set out the full text of the restriction you are applying for.</i></p> <p><i>Standard forms of restriction are set out in Schedule 4 to the Land Registration Rules 2003.</i></p>
<b>LR14. Declaration of trust where there is more than one person comprising the Tenant</b>	The Tenant is more than one person. They are to hold the Property on trust for themselves as joint tenants.

<sup>3</sup> Note that if this Lease is amended to include an obligation on the Tenant to offer to surrender the Lease to the Landlord before assigning it, a cross-reference to the offer back provisions must be included here.

<sup>4</sup> Note that if the Landlord agrees not to allow any other Lettable Units to be used for competing uses or agrees sightline or exclusion zones (see clause **5.11**), cross-references to the relevant clauses must be included here.

OR

The Tenant is more than one person. They are to hold the Property on trust for themselves as tenants in common in equal shares.

OR

The Tenant is more than one person. They are to hold the Property on trust [*complete as necessary*].

***If the Tenant is one person, omit or delete all the alternative statements.***

***If the Tenant is more than one person, the Tenant will need to complete this clause by omitting or deleting all inapplicable alternative statements***

## LEASE

### PARTIES

- (1) the Landlord named in clause LR3 and any other person who becomes the immediate landlord of the Tenant (the "**Landlord**"); [and]
- (2) the Tenant named in clause LR3 and its successors in title (the "**Tenant**"); [and]
- (3) [the Guarantor named in clause LR3 (the "**Guarantor**")].

### IT IS AGREED AS FOLLOWS:

#### 1. DEFINITIONS

This Lease uses the following definitions:

##### "1925 Act"

Law of Property Act 1925;

##### "1954 Act"

Landlord and Tenant Act 1954;

##### "1986 Act"

Insolvency Act 1986;

##### ["1994 Act"

Law of Property (Miscellaneous Provisions) Act 1994;<sup>5]</sup>

##### "1995 Act"

Landlord and Tenant (Covenants) Act 1995;

##### "Act"

any act of Parliament and any delegated law made under it;

##### ["Aerials"

wireless network equipment, television aerials and satellite dishes erected pursuant to the Tenant's rights in **paragraph 5 of Part 1 of Schedule 1**;]

##### "AGA"

an authorised guarantee agreement (as defined in section 16 of the 1995 Act);

##### "Ancillary Rent Commencement Date"<sup>6</sup>

[the date of this Lease;][the Term Start Date;][the Term Start Date or, if later, the earlier of the date on which the Tenant took occupation of the Premises and the date of this Lease;][DATE OR DESCRIPTION];

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<sup>5</sup> This definition is required only where the Landlord gives a title guarantee that includes the variations in **Schedule 5**.

<sup>6</sup> This is the date from which the Tenant pays Insurance Rent and Service Charge.

## ["Break Date"

[DATE OR DATES]<sup>7</sup> [or any date falling after that date] [or the day before any Rent Day after that date] [or any [fifth] anniversary of that date] [as specified in the Tenant's notice given under **clause 8.1**];<sup>8</sup>

## "Business Day"

any day other than a Saturday, Sunday or a bank or public holiday in England and Wales;

## "Car Park"

any car park or car parks forming part of the Centre at any time during the Term;

## "Centre"

- (a) for the purposes of the rights granted and reserved by this Lease [, any restrictive covenants given by the Landlord]<sup>9</sup> and their registration at HM Land Registry, the shopping centre known as [CENTRE DESCRIPTION] shown edged blue on the Plans; and
- (b) for all other purposes connected with this Lease, that shopping centre:
  - (i) including all alterations, additions and improvements and all landlord's fixtures forming part of it at any time during the Term;
  - (ii) including any adjoining land and buildings that the Landlord adds to it; and<sup>10</sup>
  - (iii) excluding any land or buildings that the Landlord removes from it;<sup>11</sup>

## ["Centre Contribution"]<sup>12</sup>

the aggregate of:

- (a) [50]% of the costs detailed in **paragraph 1617 of Part 3 of Schedule 3**; [and]
- (b) [a fair proportion of any after-tax income received by the Landlord in respect of the use of any Car Park, subject to that proportion not exceeding the aggregate of any Service Costs attributable to the Car Park; and<sup>13</sup>]
- (c) a fair proportion of any after-tax income received by the Landlord in respect of the use of the Common Parts [(other than any Car Park)], subject to that proportion not exceeding the aggregate of any Service Costs attributable to the generation of that income;]

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<sup>7</sup> When deciding on the relevant Break Date, best practice is to make it the day before a rent payment date. This ensures that the Tenant is not legally obliged to pay a full month's or quarter's rent on the day on which the Lease ends under the break clause.

<sup>8</sup> Delete if the Lease will not include break rights.

<sup>9</sup> Note that if the Landlord agrees not to allow any other Lettable Units to be used for competing uses or agrees sightline or exclusion zones (see clause **5.11**), include the wording in square brackets.

<sup>10</sup> If there is any change in the extent of the Centre, the Landlord may have to recalculate the service charge proportions under **paragraph 6.2 in Part 1 of Schedule 3**.

<sup>11</sup> If the Tenant is to be responsible for the repair, maintenance and replacement of glass forming part of the shopfront, consider whether any glass forming part of the shopfronts should be excluded from the definition of the Centre so that it does not fall within the Landlord's insurance and reinstatement obligations.

<sup>12</sup> Consider whether this definition (and concept of netting off against Service Costs) is required.

<sup>13</sup> Consider whether any car park should be treated separately to remainder of Centre for Service Costs and the Centre Contribution. See also footnote to **paragraph 9 in Part 4 Schedule 3**.

## “Centre Management Systems”

all or any of the following used within or serving the Centre that do not exclusively serve any Lettable Unit:

- (a) lighting systems;
- (b) security, CCTV and alarm systems;
- (c) access control systems;
- (d) [traffic control systems](#);
- ~~(d)~~(e) audio and audio-visual systems;
- ~~(e)~~(f) wireless, phone, data transmission and other telecommunications systems;
- ~~(f)~~(g) air ventilation and filtration;
- ~~(g)~~(h) air-conditioning, heating and climate control systems;
- ~~(h)~~(i) water heating, filtering and chilling systems;
- ~~(i)~~(j) footfall monitoring systems;
- ~~(j)~~(k) turnover monitoring systems;
- ~~(k)~~(l) fire detection, alarm and sprinkler systems;

and all control systems, plant, machinery, equipment, Supplies and Conducting Media used in connection with them;

## “Centre Opening Hours”

[TIME] to [TIME] on Mondays to Saturdays inclusive and [TIME] to [TIME] on Sundays (except, in either case, Easter Day and Christmas Day) and any other longer or shorter periods on any days stipulated by the Landlord;

## “Common Parts”

subject to **paragraph 4 of Part 2 of Schedule 1**, any part of, or anything in, the Centre ([including/excluding]<sup>14</sup> any Car Park) that does not form part of a Lettable Unit and that is used or available for use by:

- (a) the Tenant in common with others;
- (b) the Landlord in connection with the provision of the Services; or
- (c) customers of or visitors to the Centre;

## “company”

includes:

- (a) any UK registered company (as defined in section 1158 of the Companies Act 2006);
- (b) to the extent applicable, any overseas company as defined in section 1044 of the Companies Act 2006;

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<sup>14</sup> Consider the impact of including or excluding any Car Park on the rights granted to the Tenant.

- (c) any unregistered company (to include any association); and
- (d) any "company or legal person" in relation to which insolvency proceedings may be opened pursuant to Article 3 of the EC Regulation on Insolvency Proceedings 2000;

**"Conducting Media"**

any media for the transmission of Supplies but not including any service risers or any other airspace through which the media run;

**["CRC Costs"**

the aggregate of:

- (a) the anticipated or actual costs and charges incurred by or on behalf of any CRC Participant in purchasing carbon allowances in relation to the CRC Scheme; and
- (b) the management costs relating to the implementation of, participation in and operation of the CRC Scheme incurred by or on behalf of any CRC Participant;]

**["CRC Participant"**

the Landlord, any Participant from time to time responsible for compliance with the CRC Scheme in respect of the Centre and any Group Undertaking of the Landlord or that Participant where "Participant" and "Group Undertaking" have the meanings given to them in the CRC Energy Efficiency Scheme Order 2013;]

**["CRC Scheme"**

the Carbon Reduction Commitment Energy Efficiency Scheme administered in accordance with [the CRC Energy Efficiency Scheme Order 2010,]<sup>15</sup> the CRC Energy Efficiency Scheme Order 2013 or any later order or any similar scheme amending or replacing it;]

**"Current Guarantor"**

someone who, immediately before a proposed assignment, is either a guarantor of the Tenant's obligations under this Lease or a guarantor of the obligations given by a former tenant of this Lease under an AGA;

**"Electronic Communications Apparatus"**

"electronic communications apparatus" as defined in section 151 of the Communications Act 2003;

**"End Date"**

the last day of the Term (however it arises);

**"Environmental Performance"**

all or any of the following:

- (a) the consumption of energy and associated generation of greenhouse gas emissions;
- (b) the consumption of water;
- (c) waste generation and management; and

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<sup>15</sup> Even though the 2010 Order has been replaced in most respects by the 2013 Order, it should be retained where the Landlord intends to recover payments due in relation to Phase 1 of the Carbon Reduction Scheme as these remain payable under the 2010 Order and are not recoverable under the 2013 Order.

- (d) any other environmental impact arising from the use or operation of the Premises or the Centre;

#### **“EPB Regulations”**

the Energy Performance of Buildings (England and Wales) Regulations 2012;

#### **“EPC”**

an Energy Performance Certificate and Recommendation Report (as defined in the EPB Regulations);

#### **“External Works”**

subject to **clause 4.11.6**, all or any of:

- (a) connecting to existing Conducting Media [and the installation of new Conducting Media] under **paragraph 1 of Part 1 of Schedule 1**;
- (b) the installation of any apparatus permitted under the exception to **clause 4.11.1(b)**; and
- (c) the installation of any Aerials and Plant and Conducting Media between them and the Premises under **paragraph 5 of Part 1 of Schedule 1**;

#### **[“Gross Internal Area”**

the gross internal area ([or, when implemented, the equivalent International Property Measurement Standard](#)) measured in accordance with the edition of the ~~Code of Measuring Practice as~~ [Professional Statement for Property Measurement](#) issued by the Royal Institution of Chartered Surveyors current at the date of [this Lease][measurement];<sup>16</sup>

#### **“Group Company”**

in relation to any company, any other company within the same group of companies as that company within the meaning of section 42 of the 1954 Act;

#### **[“Head Lease”**

the lease dated [DATE] made between (1) [PARTY] and (2) [PARTY];]

#### **“Insurance Rent”**

the sums described in **paragraph 1.1 of Schedule 4**;

#### **“Insured Risks”**

the risks of fire (including subterranean fire), lightning, explosion, storm, flood, subsidence, landslip, heave, earthquake, burst or overflowing water pipes, tanks or apparatus, impact by aircraft or other aerial devices and any articles dropped from them, impact by vehicles, terrorism, riot, civil commotion and malicious damage to the extent, in each case, that cover is generally available on normal commercial terms in the UK insurance market at the time the insurance is taken out, and any other risks against which the Landlord reasonably insures from time to time, subject in all cases to any excesses, limitations and exclusions imposed by the insurers;<sup>17</sup>

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<sup>16</sup> This definition is required only where service charge weighting applies. Consider whether the measuring code to be used should be that current at the date of the Lease or the most recent version at the date that the measurement is made. See also the definitions of “Service Charge”, “Tenant’s Proportion” and “Weighted Area” and **paragraph 6 of Part 1 of Schedule 3** and **Part 5 of Schedule 3**.

<sup>17</sup> Note that “terrorism” is mentioned expressly as insurers now treat “terrorism” as a risk, even if it is a risk that may be covered by an exclusion in the insurance policy.

### **“Interest Rate”**

three per cent above the base rate for the time being in force of [NAME OF BANK] (or any other UK clearing bank specified by the Landlord);

### **“Lease”**

this lease, which is a “new tenancy” for the purposes of section 1 of the 1995 Act, and any document supplemental to it;

### **“Lettable Unit”**

accommodation within the Centre from time to time let or occupied or intended for letting or occupation, but excluding accommodation let or occupied for the purposes of providing any of the Services;

### **“Main Rent”**

the rent payable under **clause 3.2**;

### **“Notice”**

any notice, notification or request given or made under this Lease;

### **“Outgoings”**

all or any of:

- (a) all existing and future rates, taxes, duties, charges, and financial impositions charged on the Premises except for:
  - (i) tax (other than VAT) on the Rents payable; and
  - (ii) any tax arising from the Landlord’s dealing with its own interests;
- (b) Supply Costs for the Premises; and
- (c) a fair and reasonable proportion of the Outgoings referred to in **paragraphs (a) and (b)** charged in respect of the Premises and any other parts of the Centre to the extent that those amounts do not form part of the Service Costs;

### **“Permitted Use”<sup>18</sup>**

- (a) the [non-food][retail sale] of [DESCRIPTION]; or
- (b) any other [non-food][retail] use complying with the Landlord’s retail and tenant mix policy and within Class [A1] [A2] of the Schedule to the Town and Country Planning (Use Classes) Order 1987 as the Landlord may approve;

### **“Permitted Works”**

any works or installations (including Tenant’s Business Alterations and any External Works) to which the Landlord has consented or for which, under **clause 4.11**, the Landlord’s consent is not required[ together with any Prior Lease Alterations];<sup>19</sup>

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<sup>18</sup> For uses falling within Classes A1(d) or A3 to A5 in the Schedule to the Town and Country Planning (Use Classes) Order 1987, refer to the Model Commercial Lease: A3 / A4 / A5 use clause (MCL-LEASECLAUSE-04).

<sup>19</sup> Include the words in square brackets where this Lease is a renewal lease and the Landlord wants the Tenant to be under an obligation to reinstate works carried out under the Prior Lease when this Lease comes to an end or those works are to be disregarded on any rent review under this Lease.

## “Planning Acts”

every Act for the time being in force relating to the use, development, design, control and occupation of land and buildings;

## “Planning Permission”

any permission, consent or approval given under the Planning Acts;

## “Plans”

any of the plans contained in this Lease;

## [“Plant”

plant erected pursuant to the Tenant’s rights in **paragraph 5 of Part 1 of Schedule 1**;

## [“Plant Area”

the area shown [edged][coloured] [COLOUR] on the Plans or any other area substituted for it under paragraph 5.2 of **Part 1** of Schedule 1;

## “Premises”

the premises known as [ADDRESS OF PREMISES] forming part of the Centre and shown [edged][coloured] [COLOUR] on the Plans:

(a) including:<sup>20</sup>

- (i) all plaster and other internal surfacing materials and finishes on the structural walls, floors and ceilings of the Premises and on the other structural parts of the Centre within or bounding the Premises;
- (ii) the shop front, fascia and all doors, windows and door and window frames;
- (iii) the plaster and other internal surfacing and finishes on any non-structural walls separating the Premises from any Common Parts;
- (iv) one half severed vertically of any non-structural walls separating the Premises from any adjoining Lettable Units;
- (v) the entirety of any non-structural walls wholly within the Premises;
- (vi) all Conducting Media and landlord’s plant, equipment and fixtures [within and] exclusively serving the Premises including the Tenant’s fire detection, alarm and sprinkler systems (if any) up to the point of connection with the Landlord’s fire detection, alarm and sprinkler systems;
- (vii) all tenant’s fixtures; and
- (viii) any alterations to the Premises to which the Landlord has consented or for which, under **clause 4.11**, the Landlord’s consent is not required; but

(b) excluding:

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<sup>20</sup> Consider the extent of the Premises and, in particular, whether Conducting Media and Landlord’s plant, equipment and fixtures that exclusively serve the Premises, but which lie outside the Premises themselves, should be included within the definition of the Premises. If they are excluded from the Premises, consider whether the Tenant should be under an obligation to keep them in good repair and condition. The Tenant will also need rights of access over the Common Parts where it is under an obligation to repair and maintain such items (whether or not they form part of the Premises).

- (i) all load bearing and exterior walls and the floors and ceilings of the Premises (other than those included above);
- (ii) all structural parts of the Centre;
- (iii) the entirety (subject to paragraph (a)(iii) of this definition) of any non-structural walls separating the Premises from any Common Parts;
- (iv) the airspace within any service risers that run through the Premises;
- (v) the Landlord's fire detection, alarm and sprinkler systems (if any) up to the point of connection with the Tenant's fire detection, alarm and sprinkler systems; and
- (vi) the Centre Management Systems (if any) within the Premises;

#### **["Prior Lease"**

a lease of the [Premises]<sup>21</sup> dated [DATE] made between [NAME OF PARTIES] and all documents supplemental or ancillary to it;<sup>22</sup>

#### **["Prior Lease Alterations"**

all works carried out to or for the benefit of the [Premises]<sup>23</sup> during the term of the Prior Lease or under any agreement for the grant of the Prior Lease [briefly described in the schedule of works attached to this Lease];<sup>24</sup>

#### **"Rent Commencement Date"**

subject to paragraph 3.3 of Schedule 4, [DATE OR DESCRIPTION];

#### **"Rent Days"**

[25th March, 24th June, 29th September and 25th December;][the first day of every month;]<sup>25</sup>

#### **["Rent Review Date"**

[DATE] [in each of the years [YEARS] and references to "the Rent Review Date" mean the relevant Rent Review Date];<sup>26</sup>

#### **"Rents"**

the Main Rent, the Insurance Rent, the Service Charge, any VAT payable on them and any interest payable under **clause 4.5**;

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<sup>21</sup> If the extent of the Premises has changed since the date of the Prior Lease, amend this definition to refer to the extent of the premises originally let by the Prior Lease.

<sup>22</sup> Include this definition where this Lease is a renewal lease and the Landlord wants the Tenant to be under an obligation to reinstate works carried out under the Prior Lease when this Lease comes to an end or those works are to be disregarded on any rent review under this Lease.

<sup>23</sup> If the extent of the Premises has changed since the date of the Prior Lease, amend this definition to refer to the extent of the premises originally let by the Prior Lease.

<sup>24</sup> Include this definition where this Lease is a renewal lease and the Landlord wants the Tenant to be under an obligation to reinstate works carried out under the Prior Lease when this Lease comes to an end or those works are to be disregarded on any rent review under this Lease.

Because it can be difficult to establish which works have to be taken into account or disregarded on rent review or reinstated at the end of the term, consider agreeing and annexing a schedule to this Lease setting out the works carried out under the Prior Lease, whether they will have to be reinstated and their status on a rent review under this Lease.

<sup>25</sup> If rent is payable monthly, refer to the relevant payment date; for example, the first day of each month.

<sup>26</sup> The Rent Review Date(s) should ideally correspond to one of the Rent Days.

## “Risk Period”

the period that the Landlord [in its absolute discretion]<sup>27</sup> decides, being a minimum of three years and a maximum of [five]<sup>28</sup> years, starting on the date of the relevant damage or destruction;

## [“Schedule of Condition”

the schedule attached to this Lease and marked “Schedule of Condition”;<sup>29</sup>

## “Service Charge”

[subject to the provisions of **paragraph 6 of Part 1 of Schedule 3**, a fair proportion (calculated on a floor area basis or any other method as the Landlord decides from time to time)][the Tenant’s Proportion]<sup>30</sup> of the Service Costs;

## “Service Charge Code”

the 3rd edition of the code of practice (2014) published by the Royal Institution of Chartered Surveyors called “Service Charges in Commercial Property”;

## “Service Charge Exclusions”

the costs listed in **Part 4 of Schedule 3**;

## “Service Costs”

the aggregate costs (including VAT that is not recoverable by the Landlord from HM Revenue & Customs) incurred by the Landlord in providing the Services and paying the costs listed in **Part 3 of Schedule 3** after[:]<sup>31</sup>

- (a) excluding any Service Charge Exclusions[.][; and]
- (b) [deducting any Centre Contribution netted off by the Landlord under **paragraph 2.1.5 of Part 2 of Schedule 3**];]

## [“Service Provider”

any person providing services to the Tenant at the Premises for the purposes of the Tenant’s business;]

## “Services”

the services provided by the Landlord listed in **Part 3 of Schedule 3**;

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<sup>27</sup> The default position under **clause 2.8** is that the Landlord’s decision would have to be reasonable.

<sup>28</sup> Consider increasing this period if you think that it may take longer than five years to obtain any necessary consents and to rebuild following damage by an insured risk.

<sup>29</sup> Include only where the Tenant’s repairing obligation will be limited to keeping the Premises in the state of repair current at the date the Lease is granted.

<sup>30</sup> Include this definition only where floor weighting applies to the service charge calculations. See also the definitions of “Gross Internal Area”, “Tenant’s Proportion” and “Weighted Area” and **paragraph 6 of Part 1 of Schedule 3** and **Part 5 of Schedule 3**.

<sup>31</sup> Check that that the definitions of the Service Charge Exclusions and the Centre Contribution are consistent across each lease in the Centre to ensure that the service charge can be operated consistently. If a concession is made to a particular tenant, for example by agreeing to additional exclusions from the Service Costs or additional Centre Contributions:

- (a) a separate service charge reconciliation will be required for that tenant; and
- (b) the Landlord will not be able to recover any shortfall from the other tenants in the Centre as concessions offered to one tenant cannot be recovered from other tenants under the definition of “Service Charge Exclusions”.

### **“Servicing Hours”**

[TIME] to [TIME] on Mondays to Saturdays inclusive and [TIME] to [TIME] on Sundays (except, in either case, Easter Day and Christmas Day) and any other longer or shorter periods on any days stipulated by the Landlord;

### **“Supplies”**

water, [steam,] gas, air, foul and surface water drainage, electricity, oil, telephone, heating, telecommunications, internet, data communications and similar supplies or utilities;

### **“Supply Costs”**

the costs of Supplies including procurement costs, meter rents and standing charges[ and a fair and reasonable proportion of any CRC Costs incurred in relation to those Supplies];

### **“Tenant’s Business Alterations”**

so long as they do not affect the structural integrity of the Centre, any of the following in relation to the Premises or the structural or non-structural walls [or the ceiling and floor slabs] bounding the Premises that are not within any other Lettable Unit:

- (a) the installation, alteration and removal of the shop front;
- (b) the creation of openings in the walls[, ceiling and floor slabs] within or bounding the Premises for the passage of the Tenant’s Conducting Media; and
- (c) fixing holes drilled into the floor or ceiling slabs, blockwork or plaster;

### **[“Tenant's Proportion”**

subject to the provisions of **paragraph 6 of Part 1 of Schedule 3**, the proportion that the Weighted Area of the Premises bears to the aggregate of the Weighted Areas of all Lettable Units (each discounted in accordance with **Part 5 of Schedule 3**) at the beginning of the relevant accounting period;<sup>32]</sup>

### **“Term”**

the period of this Lease [(including where applicable any continuation of that period under the 1954 Act)<sup>33]</sup>;

### **“Term End Date”**

[DATE];

### **“Term Start Date”**

[DATE];

### **“Uninsured Risk”<sup>34</sup>**

any risk expressly specified in the Insured Risks definition that:

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<sup>32</sup> Include this definition only where floor weighting applies to the service charge calculations. See also the definitions of “Gross Internal Area”, “Service Charge” and “Weighted Area” and **paragraph 6 of Part 1 of Schedule 3** and **Part 5 of Schedule 3**.

<sup>33</sup> Delete the words in square brackets if the Lease is contracted out.

<sup>34</sup> This Lease gives the Tenant all the benefits it would have if damage were caused by an Insured Risk except that the Landlord has a choice as to whether or not to reinstate. It must make this choice by telling the Tenant within twelve months of the damage whether or not it wishes it reinstate. If it does not, the lease will end after that twelve month period. These provisions are only a starting point, as standard practice continues to evolve on the detail, including exactly how you define Uninsured Risks and

- (a) is not insured against because, at the time the insurance is taken out or renewed, insurance is not generally available in the UK market on normal commercial terms; or
- (b) is not, at the date of the damage or destruction, insured against by reason of a limitation or exclusion imposed by the insurers

but will not include loss or damage (or the risk of it) caused by reason of the Tenant's act or failure to act;

**"VAT"**

value added tax or any similar tax from time to time replacing it or performing a similar function;

**"VAT Supply"**

a "supply" for the purpose of the Value Added Tax Act 1994;

**["Weighted Area"**

the Gross Internal Area of the relevant property discounted in accordance with **paragraph 1 of Part 5 of Schedule 3;**<sup>35</sup>]

**"Wireless Data Services"**

the provision of wireless data, voice or video connectivity or wireless services permitting or offering access to the internet or any wireless network, mobile network or telecommunications system that involves a wireless or mobile device; and[.]

**["Wireless Policy"**

any rules of interaction produced by the Landlord that are designed to minimise interference between the Tenant's Wireless Data Services and the Landlord's Wireless Data Services and those of any other tenants or occupiers of the Centre.]

**2. INTERPRETATION**

In this Lease:

- 2.1 "notify", "notifies" or "notifying" means notify, notifies or notifying in writing in accordance with **clause 6.4;**
- 2.2 where appropriate, the singular includes the plural and vice versa, and one gender includes any other;
- 2.3 all headings are for ease of reference only and will not affect the construction or interpretation of this Lease;
- 2.4 obligations owed by or to more than one person are owed by or to them jointly and severally;
- 2.5 an obligation to do something includes an obligation not to waive any obligation of another person to do it;
- 2.6 an obligation not to do something includes an obligation not to permit or allow another person to do it;
- 2.7 the Tenant will be liable for any breaches of its obligations in this Lease committed by:

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what happens to any residual risks/parts of risks, not in this or the Insured Risks definition. You will need to consider how best to address this and, if necessary, take specific instructions as different landlords will have different approaches.

<sup>35</sup> Include this definition only where floor weighting applies to the service charge calculations. See also the definitions of "Gross Internal Area", "Service Charge" and "Tenant's Proportion" and **paragraph 6 of Part 1 of Schedule 3** and **Part 5 of Schedule 3.**

- 2.7.1 any authorised occupier of the Premises or its or their respective employees, licensees or contractors; or
- 2.7.2 any person under the control of the Tenant or acting under the express or implied authority of the Tenant;
- 2.8 reference to either the Landlord or the Tenant having a right of approval or consent under this Lease means a prior written approval or consent, which must not be unreasonably withheld or delayed except where this Lease specifies that either the Landlord or the Tenant has absolute discretion;
- 2.9 where either the Landlord or the Tenant has the right to impose regulations or to approve, decide, designate, nominate, request, require, specify or stipulate any matter or thing under this Lease, that right will be subject to a condition that it will act reasonably and properly when exercising that right except where this Lease specifies that it has absolute discretion;<sup>36</sup>
- 2.10 references to the provision of plans, drawings, specifications or other documents means their provision in hard copy, electronically in PDF format or in any other easily readable format as may be appropriate having regard to the purpose for which they are provided and the nature of the information that they contain, but not in a format that is proprietary to a particular computer system or program that cannot be imported into or easily read by another computer system or program;<sup>37</sup>
- 2.11 references to a Schedule are to a Schedule to this Lease and the Landlord and the Tenant must comply with their respective obligations in them;
- 2.12 apart from in **clause 4.6.1**, where either the Tenant or the Landlord must pay any costs that the other incurs (or any proportion of them), those costs must be reasonable and proper and reasonably and properly incurred;
- 2.13 references to any sums being payable on demand or when demanded mean being payable when demanded in writing;<sup>38</sup>
- 2.14 the Landlord's rights under **clause 4.10** and **Part 2 of Schedule 1** may also be exercised by [the landlord of the Head Lease and also by] those authorised by the Landlord [or the landlord of the Head Lease];<sup>39</sup>
- 2.15 reference to "the Centre", "the Common Parts" or "the Premises" means the whole or an individual part or parts unless inappropriate in the context used;
- 2.16 reference to "adjoining premises" means any land or buildings adjoining or nearby the Centre, whether or not owned by the Landlord (unless express reference is made to the Landlord's ownership of those premises);
- 2.17 references to an Act are to that Act as amended from time to time and to any Act that replaces it but references to the Town and Country Planning (Use Classes) Order 1987 are to that Order as in force at the date of this Lease;
- 2.18 "includes", "including" and similar words are used without limitation or qualification to the subject matter of the relevant provision;
- 2.19 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of this Lease will be unaffected; and
- 2.20 if a person must take a matter into consideration that person must have reasonable regard to it but the final decision remains at that person's absolute discretion.

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<sup>36</sup> In practice, the only provisions in this Lease that allow the Tenant to impose requirements are in **clause 5.5**.

<sup>37</sup> Where plans and specifications are provided to the Landlord, you should ensure that the Landlord has the right to use those plans and specifications – see **paragraph 2.7.7 of Schedule 6**.

<sup>38</sup> Any sums payable on demand only begin to bear interest for late payment if not paid within 10 Business Days of the date of demand – see **clause 4.5**.

<sup>39</sup> Safeguards relating to the exercise of rights are contained in **clause 5.5** and, in relation to scaffolding, in **clause 5.6**.

### 3. **DEMISE, TERM AND RENT**

- 3.1 The Landlord leases the Premises to the Tenant[ with [full][limited] title guarantee (subject to the variations set out in **Schedule 5**):<sup>40</sup>
- 3.1.1 for a term starting on the Term Start Date and ending on the Term End Date;
  - 3.1.2 together with the rights listed in **Part 1 of Schedule 1**;
  - 3.1.3 excepting and reserving to the Landlord the rights listed in **Part 2 of Schedule 1**;
  - 3.1.4 subject to the provisions of any documents or matters specified or referred to in **Schedule 5**; [and]
  - 3.1.5 subject to any easements, rights and privileges currently existing and affecting the Premises[.][; and]
  - 3.1.6 [subject to any rights reserved by the Head Lease].
- 3.2 The Tenant must pay as rent:<sup>41</sup>
- 3.2.1 for the period starting on the Rent Commencement Date [and ending on the day before the first Rent Review Date] [AMOUNT IN WORDS] pounds (£[AMOUNT IN FIGURES]) yearly[; and]
  - 3.2.2 [during the remainder of the Term, the rent set out in **clause 3.2.1** as increased (if at all) under **Schedule 2**.]
- 3.3 Main Rent is not payable for any period before the Rent Commencement Date.
- 3.4 Starting on the Ancillary Rent Commencement Date the Tenant must pay as rent:
- 3.4.1 Service Charge due under **clause 4.3** and **Schedule 3**; and
  - 3.4.2 Insurance Rent.
- 3.5 The Tenant must pay as rent VAT under **clause 4.4**.
- 3.6 The Main Rent is payable by equal [monthly/quarterly] payments in advance on the Rent Days in every year. The first payment will be for the period starting on (and to be paid on) the Rent Commencement Date and ending on the last day of that [month/quarter].
- 3.7 The Rents and all other sums payable under this Lease must be paid by the Tenant by electronic transfer from a United Kingdom bank account to the United Kingdom bank account notified by the Landlord to the Tenant.
- 3.8 The Tenant must not make any legal or equitable deduction, set-off or counterclaim from any payment due under this Lease unless required to do so by law.

### 4. **TENANT'S OBLIGATIONS**

#### 4.1 **Main Rent**

The Tenant must pay the Main Rent when due.

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<sup>40</sup> If a title guarantee is being given, the landlord may wish to vary the covenants that are implied by Part 1 of the Law of Property (Miscellaneous Provisions) Act 1994. Some suggested variations, along the lines of variations that are seen in sale and purchase contracts, are included in **Schedule 5**.

<sup>41</sup> For Turnover Rent provisions, refer to the Model Commercial Lease: Turnover Rent clause (MCL-LEASECLAUSE-01).

## 4.2 Outgoings

- 4.2.1 The Tenant must pay all Outgoings when demanded.
- 4.2.2 [If the Landlord loses the benefit of any rates relief or exemption after the End Date because the Tenant has received that benefit before the End Date, the Tenant must pay the Landlord on demand an amount equal to the relief or exemption that the Landlord has lost.]<sup>42</sup>

## 4.3 Service Charge

The Tenant must pay the Service Charge in accordance with **Part 1 of Schedule 3**.

## 4.4 VAT

- 4.4.1 The Tenant must pay:
- (a) VAT on any consideration in respect of a VAT Supply to the Tenant by the Landlord at the same time as the consideration is paid; and
  - (b) on demand VAT (and interest, penalties and costs where these are incurred because of anything the Tenant does or fails to do) charged in respect of any VAT Supply to the Landlord in respect of the Premises where that VAT is not recoverable by the Landlord from HM Revenue & Customs.
- 4.4.2 The Tenant must not do anything that would result in the disapplication of the option to tax in respect of the Landlord's interest in the Centre.

## 4.5 Interest on overdue payments

The Tenant must pay interest on the Rents and on all other sums not paid on or by the due date (or, if no date is specified, not paid within 10 Business Days after the date of demand). Interest will be payable at the Interest Rate for the period starting on the due date (or date of demand) and ending on the date of payment.

## 4.6 Reimburse ~~fees~~ costs incurred by the Landlord

The Tenant must pay on demand the Landlord's costs (including legal and surveyor's charges and bailiff's and enforcement agent's fees) and disbursements in connection with:

- 4.6.1 any breach of the Tenant's obligations in this Lease, including the preparation and service of a notice under section 146 of the 1925 Act;
- 4.6.2 any application by the Tenant for consent under this Lease, whether that application is withdrawn or consent is granted or lawfully refused, except in cases where the Landlord is required to act reasonably and the Landlord unreasonably refuses to give consent;
- ~~4.6.3~~ 4.6.3 [\[carrying out works to the Premises to improve their Environmental Performance where the Tenant, in its absolute discretion, has consented to the Landlord doing so;\]](#)<sup>43</sup>
- ~~4.6.4~~ 4.6.4 the preparation and service of any notice by the Landlord under **clause 4.14.3**; and
- ~~4.6.4~~ 4.6.5 the preparation and service of a schedule of dilapidations served no later than six months after the End Date.

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<sup>42</sup> Consider whether this is appropriate in the context of the length of the Lease.

<sup>43</sup> [This clause may be thought desirable where the Premises have an EPC rating below an E and the Landlord cannot lawfully let \(or continue to let\) the Premises unless works to improve their energy performance have been carried out. The Tenant is not obliged to consent to the works and, if it refuses consent, the Landlord may be able to rely upon an exemption in the minimum energy efficiency standards regulations to continue lawfully to let the Premises. If the Tenant consents to the works, they will be governed by the Entry Safeguards in clause 5.5 and the Landlord can recover the costs of those works under this clause. The Landlord's rights in Part 2 of Schedule 1 include a corresponding right for the Landlord to enter onto the Premises to carry out the works where the Tenant in its absolute discretion consents.](#)

#### 4.7 Third party indemnity<sup>44</sup>

4.7.1 The Tenant must indemnify the Landlord against all actions, claims, demands made by a third party, all costs, damages, expenses, charges and taxes payable to a third party and the Landlord's own liabilities, costs and expenses incurred in defending or settling any action, claim or demand in respect of any personal injury or death, damage to any property and any infringement of any right arising from:

- (a) the state and condition of the Premises or the Tenant's use of them;
- (b) the exercise of the Tenant's rights; or
- (c) the carrying out of any Permitted Works.

4.7.2 In respect of any claim covered by the indemnity in **clause 4.7.1**, the Landlord must:

- (a) give notice to the Tenant of the claim as soon as reasonably practicable after receiving notice of it;
- (b) provide the Tenant with any information and assistance in relation to the claim that the Tenant may reasonably require, subject to the Tenant paying to the Landlord all costs incurred by the Landlord in providing that information or assistance; and
- (c) mitigate its loss (at the Tenant's cost) where it is reasonable for the Landlord to do so.

#### 4.8 Insurance

The Tenant must comply with its obligations in **Schedule 4**.

#### 4.9 Repair and decoration

4.9.1 The Tenant must:

- (a) [keep the Premises and all Tenant's Business Alterations in good and substantial repair and condition and clean and tidy;] **OR** [keep the Premises in no worse state of repair and condition than they were in at the date of the Schedule of Condition that is attached for evidential purposes;]
- (b) keep all Conducting Media, plant, equipment or fixtures forming part of the Premises [(or that exclusively serve them)<sup>45</sup>] and any External Works properly maintained and in good working order in accordance with good industry practice and any requirements of the Landlord's insurers; and
- (c) replace (where beyond economic repair) any Conducting Media and plant, equipment or fixtures forming part of the Premises [(or that exclusively serve them)<sup>46</sup>] and any External Works with items of equivalent or better quality.

4.9.2 The Tenant must promptly replace any damaged glass forming part of the Premises with glass of equivalent appearance and of the same or better quality.

4.9.3 The Tenant must decorate the Premises as and when necessary and in the final six months of the Term.

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<sup>44</sup> The indemnity relates to third party claims. For Tenant breaches the Landlord needs to rely on the normal rules for an award of damages.

<sup>45</sup> The words in square brackets are required only where Conducting Media or plant, equipment or fixtures that exclusively serve the Premises are not included in the demise to the Tenant.

<sup>46</sup> The words in square brackets are required only where Conducting Media or plant, equipment or fixtures that exclusively serve the Premises are not included in the demise to the Tenant.

4.9.4 The obligations under this **clause 4.9** [apart from **clause 4.9.2** ]exclude:

- (a) damage by any Insured Risk, except to the extent that payment of any insurance money is refused because of anything the Tenant does or fails to do and the Tenant has not complied with **paragraph 1.1.3 of Schedule 4**; and
- (b) damage by any Uninsured Risk.

#### 4.10 Allow entry

4.10.1 The Tenant must allow the Landlord to enter and inspect the Premises.

4.10.2 If the Landlord requires the Tenant to remedy any breach of the Tenant's obligations regarding the state and condition of the Premises or to remove any unauthorised alterations then the Tenant must comply with those requirements immediately in the case of an emergency or, in all other cases, begin to comply with those requirements within one month after being notified of them and diligently complete any works required.

4.10.3 If the Tenant does not comply with **clause 4.10.2**, the Landlord may enter the Premises and carry out any works required itself. The Tenant must repay, as a debt on demand, all the costs the Landlord incurs in so doing. The Landlord's rights under **clause 6.1** will be unaffected.

#### 4.11 Alterations

4.11.1 The Tenant must not:

- (a) build any new structure on, or alter the external appearance of, the Premises or cut into any structural part of the Centre, except for Tenant's Business Alterations; or
- (b) install Electronic Communications Apparatus or apparatus relating to Wireless Data Services, except where intended only to serve the lawful occupier's business at the Premises.

4.11.2 Landlord's consent is not required for the installation or removal of tenant's fixtures<sup>47</sup> or for internal non-structural works to the Premises that will not have an adverse impact on the Environmental Performance of the Centre or the Centre Management Systems, but the Tenant must notify the Landlord promptly after completing those works.

4.11.3 The Tenant must not, without the Landlord's consent:

- (a) do any other works to the Premises;
- (b) carry out or install any External Works;
- (c) make any Tenant's Business Alterations; or
- (d) install any apparatus permitted under the exception to **clause 4.11.1(b)**.

4.11.4 The Tenant must comply with its obligations in **Part 1 of Schedule 6** when carrying out or installing any Permitted Works, whether or not the Landlord's consent is required for them.<sup>48</sup>

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<sup>47</sup> As tenant's fixtures form part of the Premises, their removal would be an alteration that would otherwise require consent. Consider whether there are any tenant's fixtures that should not be removed or removed only with consent – for example industrial equipment.

<sup>48</sup> **Schedule 6** is included in an attempt to speed up and reduce the cost of obtaining Landlord's consent. In most cases landlords will be able to consent by simple letter. Where **Schedule 6** does not contain all the obligations the Landlord requires because of the specific nature of the intended works, **clause 4.11.5** allows the Landlord to impose additional obligations. That may still be done by simple letter – see **paragraph 2.6 of Part 1 of Schedule 6**. Where works are to be taken into account on rent review or must definitely be removed at the end of the lease, that should be documented separately at the time the Landlord gives consent.

- 4.11.5 Where the Landlord's consent is expressly required under this **clause 4.11**, the Landlord may impose requirements on the Tenant in addition to those contained in **Schedule 6** when giving its consent.
- 4.11.6 The Tenant has no rights to carry out any alterations, works or installations outside the Premises unless it is expressly permitted to do so by this Lease. If the Landlord, in its absolute discretion, permits alterations, works or installations outside the Premises that are not permitted by this Lease, those alterations, works or installations will then be treated as External Works.

#### 4.12 Relocation of External Works

- 4.12.1 The Tenant must relocate any External Works when requested to do so on not less than one month's notice by the Landlord.
- 4.12.2 If permanent relocation of the External Works is required by the Landlord, the Landlord may serve notice under **clause 4.12.1** only if the relocation of the External Works will not have a material adverse impact on the Tenant's business at the Premises.
- 4.12.3 If the Landlord requires temporary relocation of the External Works, the Landlord must keep the period of relocation as short as reasonably practicable in the circumstances.
- 4.12.4 The Landlord will be responsible for the Tenant's costs and expenses in complying with the Landlord's request to relocate the External Works unless their relocation is required only temporarily to enable the Landlord to carry out any of the Services, in which case the costs will be included in the Service Costs.

#### 4.13 Signs and advertisements

- 4.13.1 The Tenant must not display any signs or advertisements on the Premises other than:
- (a) signs approved by the Landlord;
  - (b) normal trade signs displayed from within the Premises; or
  - (c) signage on the fascia of the Premises that indicates the Tenant's trading name in the style of and consistent with the Tenant's standard fascia signage.
- 4.13.2 The Tenant must maintain either the visibility of the shop interior from the shop front or a window display in keeping with good retailing practice.
- 4.13.3 The Tenant must keep the Premises adequately lit during the Centre Opening Hours.

#### 4.14 Obligations at the End Date

- 4.14.1 By the End Date the Tenant must have removed:
- (a) all tenant's and trade fixtures and loose contents from the Premises;
  - (b) all signage installed by the Tenant or any undertenant at the Premises or elsewhere on the Centre;
  - (c) subject to **clause 4.14.3**, all Permitted Works; and
  - (d) without affecting any other Landlord's rights, any works that have been carried out by the Tenant in breach of any obligation in this Lease.
- 4.14.2 The Tenant must make good all damage to the Premises or the Centre caused when complying with **clause 4.14.1** and restore them to the same configuration, state and condition as they were in before the items removed were originally installed.
- 4.14.3 If, no more than [nine] months and no less than [two] months before the End Date, the Tenant serves on the Landlord a request in the form set out in **Part 2 of Schedule 6**, the only Permitted Works that the Tenant must remove under **clause 4.14.1(c)** will be:

- (a) those carried out before the date of the Tenant's request that the Landlord requires to be removed by notice to the Tenant within [six] weeks of the Landlord receiving the Tenant's request; and
  - (b) those carried out after service of the Tenant's request;
- and any other Permitted Works need not be removed.<sup>49</sup>

4.14.4 At the End Date the Tenant must:

- (a) give back the Premises (and the fixtures, plant and equipment in them) in good decorative order and in a state, condition and working order consistent with the Tenant's obligations in this Lease;<sup>50</sup>
- (b) give back the Premises with vacant possession[, except to the extent that any permitted undertenant has the right to the statutory continuation of its underlease under the 1954 Act<sup>51</sup>]; and
- (c) hand to the Landlord any registers or records maintained by the Tenant pursuant to any statutory duty that relate to the Premises including any health and safety file, EPC and asbestos survey.

4.14.5 If the Tenant has not removed all of its property from the Premises by the End Date and the Landlord gives the Tenant not less than five Business Days' notice of its intention to do so:

- (a) the Landlord may sell that property as the agent of the Tenant;
- (b) the Tenant must indemnify the Landlord against any liability of the Landlord to any third party whose property has been sold in the genuine but mistaken belief that it belonged to the Tenant; and
- (c) the Landlord must pay to the Tenant the sale proceeds after deducting the costs of transportation, storage and sale incurred by the Landlord.

4.15 **User**<sup>52</sup>

4.15.1 The Tenant must not use the Premises other than for the Permitted Use.<sup>53</sup>

4.15.2 The Tenant must not use the Premises as a betting office, an amusement arcade or in connection with gaming, for any political or campaigning purposes or for any sale by auction.<sup>54</sup>

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<sup>49</sup> The Code for Leasing Business Premises (2007) says that a landlord must act reasonably in requiring the removal of authorised works. The Tenant gains certainty by asking the Landlord exactly what must be removed. The request makes it clear that, if the Landlord fails to respond, the Tenant is not obliged to remove any authorised works. Landlords will need to adopt management systems that ensure that they respond appropriately to all relevant Tenant requests. This mechanism upholds the principles of the Code for Leasing Business Premises (2007) and gives the Tenant more certainty about those alterations and additions to the Premises that must be removed before the end of the Term.

<sup>50</sup> If the Landlord will want the Tenant to hand back the Premises in a condition that is different to how the Tenant received them, you will need to attach a "reinstatement schedule" setting out the state of repair and condition in which the Premises should be returned at the end of the Term. This may be required, for example, where the Tenant received the Premises in a shell and core condition, but the Landlord will not want the Premises stripped out back to shell and core at the end of the Term.

<sup>51</sup> Delete the words in square brackets if the Lease is contracted-out or there is no right for the Tenant to underlet the Premises.

<sup>52</sup> There is no obligation on the Landlord to grant the Tenant exclusive use rights. If this obligation is later included, remember that this will be a restrictive covenant that you should refer to in the Land Registry Prescribed Clauses and register against the Landlord's title to the Centre.

<sup>53</sup> Note there is no keep open clause.

<sup>54</sup> Consider whether any additional restrictions on use should be included in the Lease.

- 4.15.3 The Tenant must not use the Premises for the sale of alcohol for consumption [on or off] the Premises or for the preparation or cooking of food other than, in either case, in connection with staff[ and customer] catering facilities ancillary to the Permitted Use.
- 4.15.4 The Tenant must not:
- (a) keep in the Premises any plant, machinery or equipment (except that properly required for the Permitted Use) or any petrol or other explosive or specially flammable substance[ (other than petrol in the tanks of vehicles parked in any parking spaces within the Premises)];
  - (b) cause any nuisance or damage to the Landlord or the other tenants or occupiers of the Centre or to the owners, tenants or occupiers of any adjoining premises;
  - (c) overload any part of the Premises or the Centre or any plant, machinery, equipment or Conducting Media;
  - (d) do anything that blocks the Conducting Media or makes them function less efficiently including any blockage to or corrosion of any drains, pipes or sewers by virtue of any waste, grease or refuse deposited by the Tenant or any cleaning of them carried out by the Tenant; or
  - (e) operate any apparatus so as to interfere with the lawful use of Electronic Communications Apparatus or the provision of Wireless Data Services elsewhere in the Centre or on any adjoining premises.
- 4.15.5 [The Tenant must comply with any Wireless Policy.<sup>55</sup>]
- 4.15.6 When exercising any right granted to it for entry to any other part of the Centre the Tenant must:
- (a) cause as little damage and interference as is reasonably practicable to the remainder of the Centre and the business of its tenants and occupiers and make good any physical damage caused; and
  - (b) comply with the Landlord's requirements and those of any other tenants and occupiers of the Centre who are affected.
- 4.15.7 On each day that the Premises are open for trade, the Tenant must arrange collection of any of the Tenant's customer trolleys that have been left on other parts of the Centre.<sup>56</sup>
- 4.15.8 The Tenant must provide the Landlord with the names, addresses and telephone numbers of not fewer than two people who from time to time hold keys and any security access codes to the Premises and who may be contacted in an emergency if the Landlord needs access to the Premises outside the Tenant's normal business hours.
- 4.15.9 [The Tenant must not use any parking spaces in respect of which the Tenant is granted rights under **paragraph 8 of Part 1 of Schedule 1**:
- (a) except for the parking of vehicles belonging to persons working at the Premises or any authorised visitors to the Premises; or
  - (b) for the repair, refuelling or maintenance of any vehicles.]

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<sup>55</sup> Consider whether the Tenant should comply with any Wireless Policy and whether you need to include more specific controls on the siting of wireless access points and the wireless channels that each tenant can use.

<sup>56</sup> Landlord's requirements in relation to trolley collection will vary from centre to centre.

#### 4.16 Dealings with the Premises<sup>57</sup>

- 4.16.1 The Tenant must not assign, underlet, charge, hold on trust, part with or share possession or occupation of the Premises in whole or in part, except as authorised under this **clause 4.16** [or **Schedule 8**].
- 4.16.2 [The Tenant must not assign the whole of the Premises [or underlet the Premises in whole or in part] during the first three years of the Term.]
- 4.16.3 The Tenant may, with the Landlord's consent, assign the whole of the Premises.
- 4.16.4 For the purposes of section 19(1A) of the Landlord and Tenant Act 1927:<sup>58</sup>
- (a) the Tenant may not assign to a Current Guarantor;
  - (b) if required<sup>59</sup> by the Landlord, any consent to assign may be subject to a condition that:
    - (i) the assigning tenant gives the Landlord an AGA; and
    - (ii) any guarantor of the assigning tenant gives the Landlord a guarantee that the assigning tenant will comply with the terms of the AGAin each case in a form that the Landlord requires, given as a deed and delivered to the Landlord before the assignment;
  - (c) any consent to assign may (to the extent required by the Landlord) be subject to either or both of the following conditions:
    - (i) that a guarantor (approved by the Landlord) that is not a Current Guarantor guarantees the assignee's performance of the Tenant's obligations in this Lease; and
    - (ii) the assignee enters into a rent deposit deed with the Landlord providing for a deposit of not less than [six] months' Main Rent (plus VAT) (calculated as at the date of the assignment) as security for the assignee's performance of the tenant's covenants in this Lease with a charge over the deposit;in either case in a form that the Landlord requires, given as a deed and delivered to the Landlord before the assignment;
  - (d) the Landlord may refuse consent to assign if the Tenant has not paid in full all Rents and other sums due to the Landlord under this Lease that are not the subject of a legitimate dispute about their payment;
  - (e) the Landlord may refuse consent to assign in any other circumstances where it is reasonable to do so; and
  - (f) the Landlord may require any other condition to the Landlord's consent if it is reasonable to do so.

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<sup>57</sup> There is no offer back provision in this lease. If needed, refer to the Model Commercial Lease: Offer Back clause (MCL-LEASECLAUSE-02).

<sup>58</sup> This Lease is deliberately light on circumstances/conditions for the purposes of the Landlord and Tenant Act 1927 and the 1995 Act. However, in light of the decision in *K/S Victoria Street v House of Fraser (Stores Management) Ltd* [2011] EWCA Civ 904, additional restrictions on assignment have been included that go beyond what is recommended in the Code for Leasing Business Premises (2007).

<sup>59</sup> Clause 2.8 requires that the Landlord act reasonably when imposing requirements unless it is expressly stated that the Landlord has an absolute discretion. If you want an absolute obligation to give an AGA, you will need to amend this clause to say so.

- 4.16.5 [The provisions of **Schedule 8** apply to underlettings of the Premises and the Tenant must comply with its obligations in that Schedule.]
- 4.16.6 The Tenant may charge the whole of the Premises to a genuine lending institution without the Landlord's consent but the Tenant must notify the Landlord under **clause 4.17** of any charge created.
- 4.16.7 In addition to the provisions of this **clause 4.16**, the Tenant may share occupation of the Premises with a Group Company of the Tenant[, any Service Provider] or concessionaire on condition that:
- (a) the Tenant notifies the Landlord of the identity of the occupier and the part of the Premises to be occupied;
  - (b) no relationship of landlord and tenant is created or is allowed to arise[ and the Premises retain the appearance of a retail unit in single occupation];
  - (c) the sharing of occupation ends if the occupier is no longer a Group Company of the Tenant[, a Service Provider] or a concessionaire; [and]
  - (d) the Tenant notifies the Landlord promptly when the occupation ends[.][; and]
  - (e) [at any time concessionaires occupy no more than [PERCENTAGE]% of the sales area of the Premises in aggregate.<sup>60</sup>]

#### 4.17 **Registration of dealings**

The Tenant must provide the Landlord with a certified copy of every document transferring or granting any interest in the Premises (and, if relevant, evidence that sections 24 to 28 of the 1954 Act have been lawfully excluded from the grant of any interest) within two weeks after the transfer or grant of that interest.<sup>61</sup>

#### 4.18 **Marketing**

- 4.18.1 Unless genuine steps are being taken towards renewal of this Lease, the Tenant must, during the six months before the End Date, allow the Landlord to:
- (a) [place on the Premises (but not obstructing the shop window display) a notice for their disposal; and<sup>62</sup>]
  - (b) show the Premises at reasonable times in the day to potential tenants (who must be accompanied by the Landlord or its agents).
- 4.18.2 The Tenant must allow the Landlord at reasonable times in the day to show the Premises to potential purchasers of the Centre (who must be accompanied by the Landlord or its agents).

#### 4.19 **Notifying the Landlord of notices or claims**

The Tenant must notify the Landlord as soon as reasonably practicable after the Tenant receives or becomes aware of any notice or claim affecting the Premises.<sup>63</sup>

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<sup>60</sup> Consider whether any other restrictions on the number of concessionaries or the areas that they can occupy are required.

<sup>61</sup> The lack of a registration fee is deliberate.

<sup>62</sup> A right to display disposal notices is unlikely to be appropriate in a shopping centre.

<sup>63</sup> The lack of an obligation on the Tenant to act on the Landlord's requirements following the service of a notice is deliberate.

#### 4.20 Comply with Acts

- 4.20.1 The Tenant must do everything required under any Act in respect of the Premises and their use and occupation and the exercise of the rights granted to the Tenant under this Lease.
- 4.20.2 The Tenant must not do or fail to do anything in respect of the Premises or the Centre the effect of which could make the Landlord liable to pay any penalty, damages, compensation, costs or charges under any Act.
- 4.20.3 The Tenant must promptly notify the Landlord of any defect or disrepair in the Premises that may make the Landlord liable under any Act or under this Lease.

#### 4.21 Planning Acts

- 4.21.1 The Tenant must comply with the requirements of the Planning Acts and with all Planning Permissions relating to or affecting the Premises or anything done or to be done on them.
- 4.21.2 The Tenant must not apply for any Planning Permission except where any approval or consent required under any other provisions in this Lease for development or change of use has already been given and the Landlord has approved the terms of the application for Planning Permission.
- 4.21.3 The Tenant may only implement a Planning Permission that the Landlord has approved.
- 4.21.4 The Tenant must assume liability for and pay any Community Infrastructure Levy payable under Part 11 of the Planning Act 2008 or any other similar payments or liabilities that become due as a result of it (or its sub-tenants or other occupiers of the Premises) carrying out any Permitted Works or changing the use of the Premises. The Tenant will not be responsible under this Lease for any corresponding sums that become due as a result of any permitted development to or change of use of the Centre carried out by the Landlord or any other occupier of the Centre.

#### 4.22 Rights and easements

The Tenant must not allow any rights or easements to be acquired over the Premises. If an encroachment may result in the acquisition of a right or easement:

- 4.22.1 the Tenant must notify the Landlord; and
- 4.22.2 the Tenant must help the Landlord in any way that the Landlord requests to prevent that acquisition so long as the Landlord meets the Tenant's costs and it is not adverse to the Tenant's business interests to do so.

#### 4.23 Management of the Centre

- 4.23.1 The Tenant must not load or unload vehicles except on the parts of the Centre that it is permitted to use for that purpose by **paragraph 2 of Part 1 of Schedule 1**.
- 4.23.2 The Tenant must not park vehicles in the Common Parts[ except in any areas that it is permitted to use for that purpose by **paragraph 8 of Part 1 of Schedule 1**].
- 4.23.3 The Tenant must not obstruct the Common Parts in any way or leave any goods on them.
- 4.23.4 The Tenant must not deposit rubbish anywhere on the Centre except in skips or bins provided for that purpose.
- 4.23.5 The Tenant must not use the Common Parts other than for the purposes designated under **clause 5.10**.
- 4.23.6 The Tenant must not use the Common Parts used for servicing the Premises outside the Servicing Hours.
- 4.23.7 The Tenant must comply with all regulations notified to it or contained within any relevant tenant guide or handbook for the Centre published by the Landlord from time to time. No

regulations may impose obligations on the Tenant that are inconsistent with the Tenant's rights and obligations under this Lease.

#### 4.24 Superior interest

The Tenant must not breach [any of the Landlord's obligations (excluding payment of rents or other sums) relating to the Centre in the Head Lease or] any obligations affecting the freehold interest in the Centre at the date of this Lease.<sup>64</sup>

#### 4.25 Registration at the Land Registry

4.25.1 If compulsorily registrable, the Tenant must:<sup>65</sup>

- (a) within six weeks of the date of this Lease, apply to register and then take ~~all~~ reasonable steps to complete the registration of this Lease and the Tenant's rights at the Land Registry; and
- (b) provide the Landlord with an official copy of the registered title promptly after receipt.<sup>66</sup>

4.25.2 The Tenant must within four weeks after the End Date, apply to the Land Registry to close and then take ~~all~~ reasonable steps to complete the closure of any registered title relating to this Lease and to remove from the Landlord's registered title(s) to the Centre any reference to this Lease and the Tenant's rights.

#### 4.26 [Turnover information

The Tenant must supply to the Landlord on a monthly basis (to enable the Landlord to monitor sales at and the performance of the Centre) details of daily gross turnover by means of the link provided by the Landlord (whether email, computer, telephone or any other method required by the Landlord).<sup>67</sup>

#### 4.27 Applications for consent or approval

Where the Tenant makes any application to the Landlord for consent or approval under this Lease, the Tenant must provide to the Landlord all the information the Landlord requires to enable the Landlord to consider the application.

### 5. LANDLORD'S OBLIGATIONS

#### 5.1 Quiet enjoyment

The Tenant may peaceably hold and enjoy the Premises during the Term without any interruption by the Landlord or any person lawfully claiming under or in trust for the Landlord except as permitted by this Lease.

#### 5.2 Insurance

The Landlord must comply with the Landlord's obligations in **Schedule 4**.

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<sup>64</sup> There is deliberately no obligation on the Tenant to comply with the terms of the head lease. Where the freehold title or the head lease impose specific obligations in respect of the Premises, consider whether the Tenant should covenant to comply with those obligations.

<sup>65</sup> Note that there is no obligation on the Tenant to register the rights granted under this Lease as legal easements if the Lease itself is not registrable at HM Land Registry.

<sup>66</sup> Consider whether the Tenant should also be under an obligation to make an application to the Land Registry for the Lease to be designated as an Exempt Information Document with information required by the Landlord removed from the "Exempt Information" version of the Lease submitted to the Land Registry.

<sup>67</sup> Clause **5.7** of the Landlord's covenants includes an obligation on the Landlord to keep the figures provided confidential and to stress the confidential nature of the information when providing it to permitted third parties.

### 5.3 Services

The Landlord must comply with its obligations in **Part 2 of Schedule 3**.

### 5.4 Repayment of rent

5.4.1 The Landlord must refund any Main Rent and Insurance Rent paid in advance by the Tenant in relation to the period falling after the End Date within [10] Business Days after the End Date.<sup>68</sup>

5.4.2 **Clause 5.4.1** will not apply if the Landlord ends this Lease under **clause 6.1** or if this Lease is disclaimed by the Crown or by a liquidator or trustee in bankruptcy of the Tenant.<sup>69</sup>

### 5.5 Entry Safeguards

The Landlord must, when entering the Premises to exercise any Landlord's rights:

5.5.1 give the Tenant at least [three] Business Days' prior notice (except in the case of emergency, when the Landlord must give as much notice as may be reasonably practicable);

5.5.2 observe the Tenant's requirements (but where that includes being accompanied by the Tenant's representative the Tenant must make that representative available);

5.5.3 observe any specific conditions to the Landlord's entry set out in this Lease;

5.5.4 cause as little interference to the Tenant's business as reasonably practicable;

5.5.5 cause as little physical damage as reasonably practicable;

5.5.6 repair any physical damage that the Landlord causes as soon as reasonably practicable;

5.5.7 where entering to carry out works, obtain the Tenant's approval to the location, method of working and any other material matters relating to the preparation for, and execution of, the works;

5.5.8 remain upon the Premises for no longer than is reasonably necessary; and

5.5.9 where reasonably practicable, exercise any rights outside the normal business hours of the Premises.

### 5.6 Scaffolding

5.6.1 The Landlord must ensure that in relation to any scaffolding erected outside the Premises in exercise of the Landlord's rights under this Lease:

(a) it is not erected or retained (unless in an emergency) during the months of January, November and December or during the one week period either side of Easter Sunday, in each year;

(b) it is removed as soon as reasonably practicable, with any damage caused to the exterior of the Premises made good;

(c) it causes as little obstruction as is reasonably practicable to the entrance to the Premises; and

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<sup>68</sup> Note that Service Charge repayments will be dealt with at the end of the relevant Service Charge Year in accordance with the provisions in **Schedule 3**.

<sup>69</sup> If the Lease comes to an end due to the Tenant's default, the Landlord will be able to retain any rents paid in advance to meet any outstanding liabilities of the Tenant at the End Date.

- (d) it does not have advertising displayed on it (except for any health and safety notices and signs relating to any other tenant whose premises are obstructed or interfered with by the scaffolding) unless the Tenant has consented to its display.

5.6.2 If the Tenant's sign and fascia or display window is obstructed or interfered with by the scaffolding, the Landlord will permit the Tenant to display a sign (approved by the Landlord) on the exterior of the scaffolding in front of the Premises so that it is visible to the public.

## 5.7 [Turnover Information

5.7.1 The Landlord will only use any information provided to the Landlord under **clause 4.26** for management purposes in connection with the monitoring and assessment of sales at and the performance of the Centre. The Landlord may disclose it to the following people on the terms of **clause 5.7.2**:

- (a) the Landlord's advisors and funders;
- (b) any party (and their advisors and funders) interested in acquiring the Landlord's interest in the Centre;
- (c) where required by law; and
- (d) where required by the rules of any listing authority.

5.7.2 Where the Landlord is allowed to disclose the information to someone else under this **clause 5.7**, the Landlord will stress its confidential nature.]

## 5.8 [Head Lease

The Landlord must pay the rent reserved by the Head Lease and comply with those tenant's obligations in the Head Lease that are not the responsibility of the Tenant under this Lease.<sup>70</sup>

## 5.9 Change in the extent of the Centre

The Landlord may change the extent of the Centre but any changes must not:

- 5.9.1 materially increase the amount of Service Charge payable by the Tenant; or
- 5.9.2 materially prejudice:
  - (a) the Tenant's use and occupation of the Premises; or
  - (b) the rights, facilities and amenities granted to the Tenant under this Lease.

## 5.10 Designation of Common Parts and use of rights

5.10.1 The Common Parts designated by the Landlord for the Tenant's use under **Part 1 of Schedule 1** must include those Common Parts that are reasonably and properly required for the use and enjoyment of the Premises for their intended use.

5.10.2 If the Landlord does not designate specific Common Parts for the Tenant's use, the Tenant will be entitled to use all Common Parts required for the reasonable and proper enjoyment of the Premises for their intended use but the Tenant will not have the right to use any Common Parts used solely by the Landlord for the provision of the Services.

5.10.3 [Any service risers allocated by the Landlord for the Tenant's use under **paragraph 1.2 of Part 1 of Schedule 1** must take into account the location of the Premises and the requirements of the Tenant but, when allocating service risers, the Landlord will be entitled

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<sup>70</sup> Consider whether any specific obligations of the superior landlord should be enforced by the Landlord (eg insurance, services).

to take into account its own requirements and the requirements of other tenants and occupiers of the Centre for the use of the service risers.<sup>71]</sup>

5.10.4 [The Landlord may manage the allocation of the roof space over which the Tenant is granted rights under **paragraph 5 of Part 1 of Schedule 1** taking into account its own requirements and the requirements of other tenants and occupiers of the Centre. Where reasonably possible, areas will be separate for each tenant and the Landlord will take into account any riser allocation strategy and the location of the tenants' facilities requiring connection to those areas.]<sup>72</sup>

#### 5.11 [Sightlines and exclusion zones]<sup>73</sup>

The Landlord will not [without the Tenant's consent]:

5.11.1 install within that part of the Centre shown cross-hatched [COLOUR] on Plan [NUMBER] any [temporary or] permanent obstruction [of a height in excess of [NUMBER] metres] that would obstruct the sightlines to the shopfront of the Premises; or

5.11.2 install any [temporary or] permanent obstruction within [2 metres] of the shopfront of the Premises.

[This clause will not apply to the existing [or proposed] items shown coloured [COLOUR] on Plan [NUMBER] or to scaffolding erected in accordance with **clause 5.6.**]

## 6. AGREEMENTS

### 6.1 Landlord's right to end this Lease

6.1.1 If any event listed in **clause 6.1.2** occurs, the Landlord may at any time afterwards re-enter the Premises or any part of them and this Lease will then immediately end.

6.1.2 The events referred to in **clause 6.1.1** are as follows:

- (a) any of the Rents are unpaid for 21 days after becoming due whether or not formally demanded;<sup>74</sup>
- (b) the Tenant breaches this Lease;
- (c) any 1925 Act, administrative, court-appointed or other receiver or similar officer is appointed over the whole or any part of the Tenant's assets, or the Tenant enters into any scheme or arrangement with its creditors in satisfaction or composition of its debts under the 1986 Act;
- (d) if the Tenant is a company or a limited liability partnership:
  - (i) the Tenant enters into liquidation within the meaning of section 247 of the 1986 Act;

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<sup>71</sup> Include this wording only where the Tenant will be given specific rights to use service risers in the Centre to install new Conducting Media.

<sup>72</sup> Include this wording only where the Tenant has the right to install plant and equipment on the roof of the Centre.

<sup>73</sup> This clause should be included only where the Landlord has agreed in the heads of terms not to obstruct the sightlines to the Premises.

<sup>74</sup> The words "whether or not formally demanded" are included to ensure that the Landlord does not have to comply with the common law pre-condition for re-entry to make a specific demand for the exact amount due at the Premises themselves or, if specified, at the place required for the payment of rent, between the hours of sunrise and sunset on the last day due for payment. Sums due under the Lease still need to be notified to the Tenant or, in the case of the main rent, will be due on known dates and in known amounts.

- (ii) the Tenant is wound up or a petition for winding up is presented against the Tenant that is not dismissed or withdrawn within [NUMBER] days of being presented;
  - (iii) a meeting of the Tenant's creditors or any of them is summoned under Part I of the 1986 Act;
  - (iv) a moratorium in respect of the Tenant comes into force under section 1(A) of and schedule A1 to the 1986 Act;
  - (v) an administrator is appointed to the Tenant; or
  - (vi) the Tenant is struck off the register of companies;
- (e) if the Tenant is a partnership, it is subject to an event similar to any listed in **clause 6.1.2(d)** with appropriate modifications so as to relate to a partnership;
- (f) if the Tenant is an individual:
- (i) a receiving order is made against the Tenant;
  - (ii) an interim receiver is appointed over or in relation to the Tenant's property;
  - (iii) the Tenant becomes bankrupt or the Tenant is the subject of a bankruptcy petition ~~that is not dismissed or withdrawn within [NUMBER] days of being presented; or;~~
  - (iv) the Tenant is adjudicated bankrupt by an adjudicator pursuant to section 263I of the 1986 Act;
  - (v) the Tenant applies for or becomes subject to a debt relief order or the Tenant proposes or becomes subject to a debt management plan; or
  - ~~(iv)~~(vi) an interim order is made against the Tenant under Part VIII of the 1986 Act or the Tenant otherwise proposes an individual voluntary arrangement;
- (g) any event similar to any listed in **clauses 6.1.2(c) to 6.1.2(f)** occurs in relation to any guarantor of the Tenant's obligations under this Lease; or
- (h) any event similar to any listed in **clauses 6.1.2(c) to 6.1.2(g)** occurs in any jurisdiction (whether it be England and Wales, or elsewhere).

6.1.3 Neither the existence nor the exercise of the Landlord's right under **clause 6.1.1** will affect any other right or remedy available to the Landlord.

6.1.4 In this **clause 6.1** references to "the Tenant", where the Tenant is more than one person, include any one of them.

## 6.2 No acquisition of easements or rights

6.2.1 Unless they are expressly included in **Part 1 of Schedule 1**, the grant of this Lease:

- (a) does not include any liberties, privileges, easements, rights or advantages over the Centre or any adjoining premises; and
- (b) excludes any rights arising by the operation of section 62 of the 1925 Act or the rule in *Wheeldon v Burrows*.

6.2.2 The Tenant has no rights that would restrict building or carrying out of works to the Centre or any adjoining premises, other than any that the Landlord specifically grants the Tenant in this Lease.

- 6.2.3 The flow of light to the Premises is and will be enjoyed with the Landlord's consent in accordance with section 3 of the Prescription Act 1832. Neither the enjoyment of that light and air nor anything in this Lease will prevent the exercise of any of the rights the Landlord has reserved out of this Lease. The Tenant must permit the exercise of these reserved rights without interference or objection.
- 6.2.4 The Tenant has no rights to enforce, or to prevent the release or modification of, the benefit of any covenants, rights or conditions to which any other property within the Centre or any adjoining premises is or are subject.

### 6.3 Works to adjoining premises

If the Landlord carries out works of construction, demolition, alteration or redevelopment on the Centre or any adjoining premises, it must:

- 6.3.1 give the Tenant details of the works to be carried out;
- 6.3.2 consult with the Tenant as to the management of potential interference;
- 6.3.3 take reasonable steps to ensure that the works do not materially adversely affect the Tenant's ability to trade from the Premises;
- 6.3.4 take into consideration modern standards of construction and workmanship;
- 6.3.5 take reasonable steps to reduce any interference to the Premises by noise, dust and vibration (having taken into consideration the Tenant's suggestions for limiting any interference); and
- 6.3.6 make good any physical damage to the Premises or its contents.

### 6.4 Service of Notices

- 6.4.1 Any Notice must be in writing and sent by pre-paid first class post or special delivery to or otherwise delivered to or left at the address of the recipient under **clause 6.4.2** or to any other address in the United Kingdom that the recipient has specified as its address for service by giving not less than ten Business Days' notice under this **clause 6.4**.
- 6.4.2 A Notice served on:
- (a) a company or limited liability partnership registered in the United Kingdom must be served at its registered office;
  - (b) a person resident in or incorporated in a country outside the United Kingdom must be served at the address for service in the United Kingdom of that party set out in the deed or document to which they are a party or if no such address has been given at their last known address in the United Kingdom. [The following [are the addresses][is the address] for service in the United Kingdom for:<sup>75</sup>
    - (i) [[NAME OF LANDLORD] - [ADDRESS]; [and]
    - (ii) [NAME OF TENANT] - [ADDRESS]; [and]
    - (iii) [NAME OF GUARANTOR] - [ADDRESS].]
  - (c) anyone else must be served:
    - (i) in the case of the Landlord, at any postal address in the United Kingdom shown from time to time for the registered proprietor on the title number set out in

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<sup>75</sup> If any of the original parties to the Lease are non-UK parties, include an address for service in the United Kingdom for that party here.

Land Registry Prescribed Clause LR2.1 or if no such address is given, at its last known address in the United Kingdom;

- (ii) in the case of the Tenant, at the Premises;
- (iii) in the case of a guarantor, at the address of that party set out in the deed or document under which they gave the guarantee; and
- (iv) in respect of any other party, at their last known address in the United Kingdom.

6.4.3 Any Notice given will be treated as served on the second Business Day after the date of posting if sent by pre-paid first class post or special delivery or at the time the Notice is delivered to or left at the recipient's address if delivered to or left at that address.

6.4.4 If a Notice is treated as served on a day that is not a Business Day or after 5.00pm on a Business Day it will be treated as served at 9.00am on the immediately following Business Day.

6.4.5 Service of a Notice by fax or e-mail is not a valid form of service under this Lease.

## 6.5 **Contracts (Rights of Third Parties) Act 1999**

Nothing in this Lease creates any rights benefiting any person under the Contracts (Rights of Third Parties) Act 1999.

## 6.6 **[Contracting-out<sup>76</sup>**

6.6.1 The Landlord and the Tenant confirm that before the date of [this Lease] [the agreement for the grant of this Lease dated [DATE] made between the parties to this Lease]:

- (a) a notice complying with Schedule 1 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 which relates to this tenancy was served by the Landlord on the Tenant on [DATE]; and
- (b) a statutory declaration dated [DATE] complying with paragraph 8 of Schedule 2 to that Order was made by [the Tenant] [[NAME OF DECLARANT], who the Tenant confirms was duly authorised by the Tenant to make the statutory declaration on its behalf].

6.6.2 The Landlord and the Tenant agree and declare that the provisions of sections 24–28 (inclusive) of the 1954 Act do not apply to the tenancy created by this Lease.

6.6.3 [The Landlord and the Tenant confirm that there is no agreement for this Lease.]]

## 6.7 **Energy Performance Certificates**

6.7.1 The Tenant must not obtain or commission an EPC in respect of the Premises unless required to do so by the EPB Regulations. If the Tenant is required to obtain an EPC, the Tenant must (at the Landlord's option) obtain an EPC from an assessor approved by the Landlord or pay the Landlord's costs of obtaining an EPC for the Premises.

6.7.2 The Tenant must cooperate with the Landlord, so far as is reasonably necessary, to allow the Landlord to obtain any EPC for the Premises or the Centre and:

- (a) provide the Landlord (at the Landlord's cost) with copies of any plans or other information held by the Tenant that would assist in obtaining that EPC; and

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<sup>76</sup> No 1954 Act exclusion wording is included for guarantors.

(b) allow such access to the Premises to any energy assessor appointed by the Landlord as is reasonably necessary to inspect the Premises for the purposes of preparing any EPC.

6.7.3 The Tenant must give the Landlord written details on request of the unique reference number of any EPC the Tenant obtains or commissions in respect of the Premises.

6.7.4 The Landlord must give the Tenant written details on request of the unique reference number of any EPC the Landlord obtains or commissions in respect of the Premises or the Centre.

#### 6-76.8 [Sustainability

The Landlord and Tenant must comply with the provisions of **Schedule 7**.]

#### 6-86.9 [Superior landlord's consent

Any consent that the Landlord gives is conditional on the consent (where required) of any superior landlord being obtained. The Landlord will apply for that consent at the Tenant's cost and, to the extent the Landlord is consenting, the Landlord must take reasonable steps to obtain it.<sup>77</sup>]

### 7. [GUARANTOR'S OBLIGATIONS<sup>78</sup>

7.1 The Guarantor, as primary obligor, guarantees to the Landlord that:

7.1.1 the Tenant will comply with all the Tenant's obligations in this Lease. If the Tenant defaults, the Guarantor will itself comply with those obligations and will indemnify the Landlord against all losses, costs, damages and expenses caused to the Landlord by that default; and

7.1.2 it will indemnify the Landlord against all losses, costs, damages and expenses caused to the Landlord by the Tenant proposing or entering into any company voluntary arrangement, scheme of arrangement or other scheme having or purporting to have the effect of impairing, compromising or releasing any or all of the obligations of the Guarantor in this **clause 7**.

7.2 If the Landlord in its absolute discretion notifies the Guarantor within three months after the date of any disclaimer or forfeiture of this Lease or the Tenant being struck off the register of companies, the Guarantor must, within ten Business Days, at the Landlord's option either:

7.2.1 at the Guarantor's own cost (including payment of the Landlord's costs) accept the grant of a lease of the Premises:

(a) for a term starting and taking effect on the date of the disclaimer or forfeiture of this Lease or the Tenant being struck off the register of companies;

(b) ending on the date when this Lease would have ended if the disclaimer, forfeiture or striking-off had not happened;

(c) at the same rent ~~(unless and other sums payable;~~

~~(e)~~(d) containing a rent review date on the term commencement date of the new lease if there is a rent review ~~due or one becomes due under this Lease that falls before completion of the new lease, in which case the rent will be that which would have that term commencement date that has not~~ been ~~agreed or decided under this Lease~~ and other sums payable; concluded (but with the rent being reviewed as at the date of the unconcluded rent review);

<sup>77</sup> References to superior landlord's consent should be included only if there is an existing superior lease.

<sup>78</sup> There is no obligation on the Tenant to provide an alternative guarantor to replace a deceased or insolvent guarantor as it is unrealistic to expect this.

~~(d)~~(e) containing rent review dates on each ~~unimplemented~~ Rent Review Date under this Lease that falls on or after the term commencement date of the new lease; and

~~(e)~~(f) otherwise on the same terms and conditions as this Lease; or

7.2.2 pay the Landlord any arrears of the Rents, the Outgoings and all other sums due under this Lease plus the amount equivalent to the total of the Rents, the Outgoings and all other sums due under this Lease that would be payable for the period of 6 months following the disclaimer, forfeiture or striking-off.<sup>79</sup>

7.3 If **clause 7.2.2** applies then, on receipt of the payment in full, the Landlord must release the Guarantor from its future obligations under this **clause 7** (but that will not affect the Landlord's rights in relation to any prior breaches).

7.4 The Guarantor's liability will not be reduced or discharged by:

7.4.1 any failure for any reason to enforce in full, or any delay in enforcement of, any right against, or any concession allowed to the Tenant or any third party;

7.4.2 any variation of this Lease (except that a surrender of part will end the Guarantor's future liability in respect of the surrendered part);

7.4.3 any right to set-off or counterclaim that the Tenant or the Guarantor may have;

7.4.4 any death, incapacity, disability or change in the constitution or status of the Tenant, the Guarantor or of any other person who is liable, or of the Landlord;

7.4.5 any amalgamation or merger by any party with any other person, any restructuring or the acquisition of the whole or any part of the assets or undertaking of any party by any other person;

7.4.6 the existence or occurrence in relation to the Guarantor of any matter referred to in any of **clauses 6.1.2(c) to 6.1.2(h)**; or

7.4.7 anything else other than a release by the Landlord by deed.

7.5 The Guarantor must not claim in competition with the Landlord in the insolvency of the Tenant and must not take any security, indemnity or guarantee from the Tenant in respect of the Tenant's obligations under this Lease.

7.6 Nothing in this **clause 7** may impose any liability on the Guarantor that exceeds the liability that it would have had were it the tenant of this Lease.]

## 8. **[BREAK CLAUSE]**

8.1 The Tenant may end the Term on [any][the] Break Date by giving the Landlord not less than [LENGTH] months' notice [specifying the Break Date]<sup>80</sup> following which the Term will end on that Break Date[.][ if:<sup>81</sup>

8.1.1 [on the Break Date the Main Rent due up to and including that Break Date has been paid in full; [and]

8.1.2 on the Break Date the whole of the Premises are given back to the Landlord free of the Tenant's occupation and the occupation of any other lawful occupier and without any continuing underleases[.][; and]

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<sup>79</sup> There is no right to repayment if the Landlord subsequently re-lets the Premises during the six month period covered by this payment.

<sup>80</sup> This wording is not required if the Tenant can end the lease only on a single specified date.

<sup>81</sup> The conditions in this break clause are consistent with the Code for Leasing Business Premises (2007).

- 8.1.3 [the Tenant has, on or before the Break Date, paid to the Landlord an amount equal to [insert figure/proportion of the Main Rent] (plus any VAT payable on that amount).]]
- 8.2 The Landlord may waive any of the pre-conditions in [**clauses 8.1.1 to 8.1.3**] at any time before the [relevant] Break Date by notifying the Tenant.
- 8.3 [If the Tenant gives notice to the Landlord under **clause 8.1**, the Tenant must on or before the Break Date make the payment to the Landlord as detailed in **clause 8.1.3**.]
- 8.4 [The break right in this **clause 8** is personal to the Tenant named in Land Registry Prescribed Clause LR3 and will end on the date of the first deed of assignment or transfer of the Lease or on the date when that Tenant ceases to exist.]
- 8.5 If this Lease ends under this **clause 8**, this will not affect the rights of any party for any prior breach of an obligation in this Lease.<sup>82</sup>
- 8.6 Time is of the essence for the purposes of this **clause 8**.]

## 9. **JURISDICTION**

- 9.1 This Lease and any non-contractual obligations arising out of or in connection with it will be governed by the law of England and Wales.
- 9.2 Subject to **clause 9.3** and any provisions in this Lease requiring a dispute to be settled by an expert or by arbitration, the courts of England and Wales have exclusive jurisdiction to decide any dispute arising out of or in connection with this Lease, including in relation to any non-contractual obligations.
- 9.3 Any party may seek to enforce an order of the courts of England and Wales arising out of or in connection with this Lease, including in relation to any non-contractual obligations, in any court of competent jurisdiction.

## 10. **LEGAL EFFECT**

This Lease takes effect and binds the parties from and including the date at clause LR1.

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<sup>82</sup> The obligation to repay any rent relating to the period after the Break Date is in **clause 5.4**.

# 1 SCHEDULE 1

## Rights

### Part 1 Tenant's Rights<sup>83</sup>

The following rights are granted to the Tenant in common with the Landlord, any person authorised by the Landlord and all other tenants and occupiers of the Centre but subject to the Landlord's rights:

#### 1. Running of services

- 1.1 To connect to and use the existing Conducting Media at the Centre [intended to serve the Premises](#) for the passage of Supplies from and to the Premises.
- 1.2 [To use a fair proportion of the riser space allocated to tenants for their use within the Centre that the Landlord has designated for the purpose of installing and running new Conducting Media exclusively serving the Premises.<sup>84</sup>]

#### 2. Access and servicing

- 2.1 Access to and from the Premises on foot only over the Common Parts designated by the Landlord for the Tenant's use.
- 2.2 During the Servicing Hours (and subject to **clause 4.23**) to use each of the following within the Common Parts designated by the Landlord for the Tenant's use:
  - 2.2.1 any service area for loading and unloading and otherwise servicing the Premises;
  - 2.2.2 the service roads with or without vehicles to come and go to and from the Premises and any service area specified in **paragraph 2.2.1**; and
  - 2.2.3 the service corridors and any goods lifts with or without trolleys to come and go between the Premises and any service area specified in **paragraph 2.2.1**.

#### 3. Refuse disposal

To deposit rubbish in any receptacles or waste compactors within the Common Parts provided by the Landlord for that purpose and designated by the Landlord for the use of the Tenant.

#### 4. Entry onto the Common Parts

- 4.1 If the relevant work cannot otherwise be reasonably carried out, to enter the Common Parts to comply with the Tenant's obligations in this Lease. When exercising this right, the Tenant must:
  - 4.1.1 give the Landlord at least [three] Business Days' prior notice (except in the case of emergency, when the Tenant must give as much notice as may be reasonably practicable);
  - 4.1.2 observe the Landlord's requirements (but where that includes being accompanied by the Landlord's representative the Landlord must make that representative available);
  - 4.1.3 cause as little interference to the operation and use of the Centre as reasonably practicable;
  - 4.1.4 cause as little physical damage as is reasonably practicable;
  - 4.1.5 repair any physical damage that the Tenant causes as soon as reasonably practicable;

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<sup>83</sup> Appropriate rights will be property-specific in each case.

<sup>84</sup> Include this right only where the Tenant will have a specific requirement to install new Conducting Media to serve the Premises.

4.1.6 where entering to carry out works, obtain the Landlord's approval to the location, method of working and any other material matters relating to the preparation for, and execution of, the works;

4.1.7 remain upon the Common Parts for no longer than is reasonably necessary; and

4.1.8 where practicable, exercise this right outside the normal business hours of the Centre.

5. **[Roof space**

5.1 Subject to the Tenant complying with **clauses 4.11 and 4.12**, to erect and maintain wireless network equipment, television aerials and satellite dishes and plant not exceeding two metres in height on the roof of the Centre [in a location][in the Plant Area], of a size and design, and with connections to the Premises, approved by the Landlord.

5.2 Subject to the Landlord complying with **clauses 4.12.2, 4.12.3 and 5.10**, the Landlord may allocate alternative roof space to the Tenant at any time.]

6. **Directory board**

To exhibit the Tenant's trading name [in the Landlord's house style] on any appropriate Centre directory board.

7. **Support and shelter**

Support and shelter for the Premises from the Centre.

8. **[Staff parking<sup>85</sup>**

**Option 1: Non-designated spaces for parking**

8.1 To use, on a first come first served basis, [those areas of the Car Parks designated by the Landlord] [those areas shown coloured [COLOUR] on [the Plan][Plan [NUMBER]]] (or any other area within or adjoining the Centre notified by the Landlord to the Tenant at any time) for the parking of vehicles belonging to persons working at or authorised visitors to the Premises.

**OR**

**Option 2: Designated spaces for parking subject to a right to move those spaces**

8.2 To use those areas shown coloured [COLOUR] on [the Plan][Plan [NUMBER]] (or an equivalent number of parking spaces in any location or locations within or adjoining the Centre notified by the Landlord to the Tenant at any time) for the parking of [NUMBER] vehicles belonging to persons working at or authorised visitors to the Premises.

8.3 [To use, on a first come first served basis, any cycle racks within the Centre to park bicycles.]]

9. **[Toilet facilities**

To use any toilet facilities within the Common Parts designated by the Landlord as facilities for the use of the Tenant.]

10. **[Escape**

On foot only, in emergencies and for fire escape drills, to use all fire escape routes in the Centre designated by the Landlord for the use of the Tenant whether or not forming part of the Common Parts.]

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<sup>85</sup> Consider the Landlord's policy on staff parking within the Centre.

## Part 2 Landlord's Rights

The following rights are excepted and reserved to the Landlord:

### 1. Support, shelter, light and air

- 1.1 Support and shelter for the remainder of the Centre from the Premises.
- 1.2 All rights of light or air to the Premises that now exist or that might (but for this reservation) be acquired over any other land.

### 2. Running of services

The passage and running of Supplies from and to the remainder of the Centre through existing Conducting Media (if any) within the Premises.

### 3. Entry on to the Premises<sup>86</sup>

#### 3.1 To enter the Premises to:

- 3.1.1 review or measure the Environmental Performance of the Premises including to install, inspect, clean, maintain, replace and to take readings from metering equipment, [heat cost allocators and thermostatic radiator valves](#) within or relating to the Premises and to prepare an EPC; and
- 3.1.2 estimate the current value or rebuilding cost of the Premises and the Centre for insurance or any other purpose.

#### 3.2 If the relevant work cannot be reasonably carried out without entry onto the Premises, to enter them to:

- 3.2.1 build on or into any boundary or party walls on or adjacent to the Premises;
- 3.2.2 inspect, repair, alter, decorate, rebuild or carry out other works upon the Centre;
- 3.2.3 inspect, clean, maintain, replace or repair any existing Conducting Media within the Premises but serving the Centre;
- 3.2.4 carry out any Services; or
- 3.2.5 for any other reasonable management purpose.

#### 3.3 [Where the Tenant (in its absolute discretion) consents, to enter the Premises to carry out any works to the Premises to improve their Environmental Performance.]<sup>87</sup>

~~3.3.4~~ To enter the Premises to do anything that the Landlord is expressly entitled or required to do under this Lease or for any other reasonable purpose in connection with this Lease.

### 4. Common Parts and Conducting Media

- 4.1 In an emergency, or when works are being carried out to them, to close off or restrict access to the Common Parts, so long as (except in an emergency) alternative facilities are provided that are not materially less convenient.

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<sup>86</sup> The safeguards that tenants ordinarily look for where a landlord has a right of entry are contained in **clause 5.5** (Landlord's obligations). There is no need to repeat them in this Schedule.

<sup>87</sup> [This right may be thought desirable where the Premises have an EPC rating below an E and the Landlord cannot lawfully let \(or continue to let\) the Premises unless works to improve their energy performance have been carried out. The Tenant is not obliged to consent to the works and, if it refuses consent, the Landlord may be able to rely upon an exemption in the minimum energy efficiency standards regulations to continue lawfully to let the Premises. If the Tenant consents to the works, they will be governed by the Entry Safeguards in \*\*clause 5.5\*\* and the Landlord can recover the costs of those works under \*\*clause 4.6.3\*\*.](#)

- 4.2 To change, end the use of or reduce the extent of any Common Parts or Conducting Media so long as:
- 4.2.1 alternative facilities are provided that are not materially less convenient; or
  - 4.2.2 if no alternative is provided, the use and enjoyment of the Premises is not materially adversely affected.
- 4.3 From time to time to designate areas within the Common Parts for particular purposes including as service areas, Car Parks, service roads and footpaths and from time to time to reduce the size of any designated areas, so long as the remaining areas are reasonably adequate for their intended purposes.
- 4.4 [To run Conducting Media over, under or along those areas allocated for the use of the Tenant under **paragraph 5 of Part 1 of Schedule 1** (or allow others to do so) so long as they do not materially adversely affect the Tenant's use of those areas.]
- 4.5 [Subject to **clause 5.11**, to<sup>88</sup>][To] allow trade barrows, stands, festive activities, promotional activities and other commercial activities to take place on or to operate from the Common Parts, so long as there is no material obstruction to the use of those Common Parts by those having rights over them.

5. **Adjoining premises**

Subject to **clause 6.3**, to carry out works of construction, demolition, alteration or redevelopment on the Centre and any adjoining premises (and to permit others to do so) as the Landlord in its absolute discretion considers fit (whether or not these works interfere with the flow of light and air to the Premises) and the right in connection with those works to underpin and shore up the Premises.

6. **Plant, equipment and scaffolding**

The right, where necessary, to bring plant and equipment onto the Premises and to place scaffolding and ladders upon the exterior of or outside any buildings on the Premises in exercising the Landlord's rights under this Lease.

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<sup>88</sup> Clause **5.11** is the clause that requires the Landlord to maintain sightlines for the Premises and not to place items within an agreed exclusion zone.

## 2 SCHEDULE 2

### Rent review<sup>89</sup>

#### 1. Defined terms

This **Schedule 2** uses the following definitions:

#### “Assumptions”

that:

- (a) if the Centre or any part of it has been damaged or destroyed, it has been reinstated before the Rent Review Date;
- (b) the Premises are fit for immediate occupation and use by the willing tenant;<sup>90</sup>
- (c) the Premises may lawfully be let to and used for the Permitted Use by any person throughout the term of the Hypothetical Lease;
- (d) the Tenant has complied with the Tenant’s obligations in this Lease and (except to the extent that there has been a material or persistent breach by the Landlord) the Landlord has complied with the Landlord’s obligations in this Lease; and
- (e) on the grant of the Hypothetical Lease the willing tenant will receive the benefit of a rent free period, rent concession or any other inducement of a length or amount that might be negotiated in the open market for fitting-out purposes and that the Market Rent is the rent that would become payable after the end of that period or concession or payment of that inducement.<sup>91</sup>

#### “Disregards”

Any or all of the following:

- (a) any effect on rent of the Tenant (and the Tenant’s predecessors in title and lawful occupiers) having been in occupation of the Premises;
- (b) any goodwill accruing to the Premises because of the Tenant’s business (and that of the Tenant’s predecessors in title and lawful occupiers);
- (c) any special bid that the Tenant or any other party with a special interest in the Premises might make by reason of its occupation of any other part of the Centre or any adjoining premises;
- (d) any increase in rent attributable to any improvement, including any tenant’s initial fitting-out works [and any Prior Lease Alterations<sup>92</sup>], whether or not within the Premises:
  - (i) carried out by and at the cost of the Tenant or the Tenant’s predecessors in title or lawful occupiers before or during the Term;

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<sup>89</sup> This Schedule contains an open market review. There is no attempt to review to a headline rent. Drafting for an indexed-linked review is contained in the Model Commercial Lease: Index Linked Rent Review clause (MCL-LEASECLAUSE-03).

<sup>90</sup> There is deliberately no assumption that the Premises are fitted-out. If the Premises are to be valued on the assumption that they are handed over to the Tenant in a specific state (such as shell and core with capped services) then a rent review specification will be needed and an additional assumption added that the Premises are handed over to the willing tenant in the state set out in the specification.

<sup>91</sup> This assumption is considered to be neutral. There is no attempt to review to a headline rent.

<sup>92</sup> On the grant of a renewal lease or a lease re-gearing consider carefully the extent of the Premises to be taken into account on a rent review under this Lease and whether works carried out under the Prior Lease should be taken into account or disregarded for the purposes of rent review.

- (ii) carried out with the written consent, where required, of the Landlord or the Landlord's predecessors in title; and
  - (iii) not carried out pursuant to an obligation to the Landlord or the Landlord's predecessors in title (but any obligations relating to the method or timing of works in any document giving consent will not be treated as an obligation for these purposes);
- (e) any reduction in rent attributable to works that have been carried out by the Tenant (or the Tenant's predecessors in title or lawful occupiers); [and]
  - (f) any reduction in rent attributable to any temporary works, operations or other activities on any adjoining premises[.]; and]
  - (g) [any effect on rent of the floor area of any mezzanine floor installed within the Premises by the Tenant (or the Tenant's predecessors in title or lawful occupiers) but not the fact that a mezzanine floor can lawfully be installed within the Premises without the need for any further planning or other consents.<sup>93</sup>]

### "Hypothetical Lease"

a lease:

- (a) of the whole of the Premises;
- (b) on the same terms as this Lease (including this **Schedule 2**) except for:
  - (i) the amount of Main Rent reserved immediately before the Rent Review Date;
  - (ii) any rent free period, rent concession or any other inducement received by the Tenant in relation to the grant of this Lease;
  - (iii) any break clause in this Lease;<sup>94</sup> [and]
  - (iv) [ANY OTHER SPECIFIC EXCLUSIONS]
- (c) by a willing landlord to a willing tenant;
- (d) with vacant possession;
- (e) without any premium payable by or (subject to **paragraph (e)** of the definition of "Assumptions") to the willing tenant;
- (f) for a term of [LENGTH] years starting on the Rent Review Date; [and]
- (g) with rent review dates every [five] years[.]; and]
- (h) [with a right for the tenant to bring the Hypothetical Lease to an end on [or at any time after] the [NUMBER] anniversary of the date on which the term starts.]<sup>95</sup>

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<sup>93</sup> In any case where the Tenant may be able to install a mezzanine floor (or if one is already present) you should include this subparagraph (e).

<sup>94</sup> All break clauses in this Lease are ignored. Any corresponding break clauses in the Hypothetical Lease should be included in subparagraph (h). Where there is a rent free period or concessionary rent that follows the non-exercise of the break clause, consider including a specific exclusion of this.

<sup>95</sup> Consider the treatment of break clauses in the Hypothetical Lease.

## **“Market Rent”**

the yearly rent at which the Premises might reasonably be expected to be let on the open market on the Rent Review Date, on the terms of the Hypothetical Lease and applying the Assumptions and the Disregards.<sup>96</sup>

### **2. Rent review**

2.1 On the Rent Review Date the Main Rent is to be reviewed to the higher of;

2.1.1 the Main Rent reserved immediately before the Rent Review Date; and

2.1.2 the Market Rent.

2.2 The reviewed Main Rent will be payable from and including the Rent Review Date.

### **3. Resolution of disputes**

3.1 The Market Rent at the Rent Review Date may be agreed between the Landlord and the Tenant. If they have not done so (whether or not they have tried) by [the date three months before] the Rent Review Date, either the Landlord or the Tenant can require the Market Rent to be decided by an independent [expert/arbitrator].<sup>97</sup> If the Landlord and the Tenant do not agree on who should decide the Market Rent, the [expert/arbitrator] will be appointed by the President of the Royal Institution of Chartered Surveyors on the application of either the Landlord or the Tenant. [The arbitration must be conducted in accordance with the Arbitration Act 1996.] [The expert will:]

3.1.1 [invite the Landlord and the Tenant to submit to him a proposal for the Market Rent with any relevant supporting documentation;

3.1.2 give the Landlord and the Tenant an opportunity to make counter submissions;

3.1.3 give written reasons for his decisions, which will be binding on the parties; and

3.1.4 be paid by the Landlord and the Tenant in the shares and in the manner that he decides (or failing a decision, in equal shares).]

3.2 The [expert/arbitrator] must be an independent chartered surveyor of not less than ten years' standing who is experienced in the rental valuation of property similar to the Premises and who knows the local market for such premises.

3.3 If the [expert/arbitrator] dies, becomes unwilling or incapable of acting or it becomes apparent for any other reason that he will be unable to decide the Market Rent within a reasonable time, he may be replaced by a new [expert/arbitrator] who must be appointed on the terms set out in this **paragraph 3**.

3.4 Responsibility for the costs of referring a dispute to an [expert/arbitrator], including costs connected with the appointment of the [expert/arbitrator] but not the legal and other professional costs of any party in relation to a dispute, will be decided by the [expert/arbitrator] and failing a decision, they will be shared equally between the parties.

### **4. Consequences of delay in agreeing the revised rent**

4.1 If, by the Rent Review Date, the reviewed Main Rent has not been ascertained, then:

4.1.1 the Main Rent reserved under this Lease immediately before the Rent Review Date will continue to be payable until the reviewed Main Rent has been ascertained;

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<sup>96</sup> Current market practice is generally not to use the expression “best rent”.

<sup>97</sup> Consider which option the client prefers for resolving rent review disputes.

- 4.1.2 following the ascertainment of the Main Rent, the Landlord will demand the difference (if any) between the amount the Tenant has actually paid and the amount that would have been payable had the Main Rent been ascertained before the Rent Review Date; and
- 4.1.3 the Tenant must pay that difference to the Landlord within 10 Business Days after that demand and interest at three per cent below the Interest Rate calculated on a daily basis on each instalment of that difference from the date on which each instalment would have become payable to the date of payment. If not paid those sums will be treated as rent in arrear.

5. **Rent review memorandum**

When the Market Rent has been ascertained, a memorandum recording the Main Rent reserved on review must be entered into. The Landlord and the Tenant will each bear their own costs in relation to that memorandum.

6. **Time not of the essence**

For the purpose of this **Schedule 2** time is not of the essence.<sup>98</sup>

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<sup>98</sup> A decision has been taken not to include provisions to circumvent any statutory restrictions on implementing rent reviews or to nominate an extra rent review date when any restrictions cease to have effect.

### 3 SCHEDULE 3

#### Services and Service Charge<sup>99</sup>

##### Part 1 Administrative provisions

##### 1. Accounting period

The accounting period will be the period ending on [DATE] in each year or otherwise as the Landlord may decide and notify to the Tenant. For any accounting period that does not fall wholly within the Term, the Service Charge will be a due proportion calculated on the assumption that the service charge expenditure accrues equally on a day to day basis throughout the period.

##### 2. Service charge statements

2.1 After the end of each accounting period, the Landlord will supply the Tenant with a statement (the "**Service Charge Statement**") for that accounting period of the:

2.1.1 Service Costs; [and]

2.1.2 [Centre Contribution; and]

2.1.3 Service Charge payable.<sup>100</sup>

2.2 The Landlord must take ~~all~~ reasonable steps to supply the Service Charge Statement within four months after the end of each accounting period.

2.3 Service Costs incurred in one accounting period, if not included in the Service Charge Statement for that accounting period for any reason, may be included in the Service Charge Statement for a subsequent accounting period.

2.4 The Tenant will be entitled upon prior appointment to inspect evidence of the Service Costs[ and the Centre Contribution] at the Landlord's head office or any other location the Landlord specifies. The Tenant must ask to inspect the evidence not later than four months after receipt of the Service Charge Statement.

##### 3. On-account payments of service charge

3.1 Until the Service Charge for each accounting period has been calculated, the Tenant must pay, by equal [monthly][quarterly] payments on the Rent Days, a provisional sum by way of Service Charge at the level that the Landlord requires.

3.2 The Tenant must also pay on demand any sum or sums that the Landlord requires where the Landlord will be obliged to incur any Service Costs and the sums held on account by the Landlord are insufficient to meet those costs.

##### 4. Balancing payments of service charge

4.1 When the Service Charge for each accounting period has been calculated:

4.1.1 the Tenant must pay any amount due from it on demand; and<sup>101</sup>

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<sup>99</sup> The administrative provisions have deliberately been kept brief because much is covered by the Landlord's obligations in Part 2 to have regard to the Service Charge Code. There is deliberately no provision for a reserve or sinking fund.

<sup>100</sup> If the Landlord has agreed to cap the amount of service charge payable by the Tenant, please refer to the Model Commercial Lease: Index Linked Service Charge Cap clause (MCL-LEASECLAUSE-05).

<sup>101</sup> Any sums payable on demand only begin to bear interest for late payment if not paid within 10 Business Days of the date of demand – see **clause 4.5**.

4.1.2 the Landlord must credit any amount due to the Tenant against the next payment or payments to be made by the Tenant under **paragraph 3**. Any amount owing at the End Date must be repaid to the Tenant within one month of its calculation.

4.2 The End Date will not affect the Tenant's obligation to pay or the Landlord's right to recover Service Charge after the End Date where this has not been calculated and demanded before the End Date.

## 5. **Service charge disputes**

If any dispute arises in connection with the Service Charge, the Landlord and the Tenant must attempt to resolve it by appropriate alternative means before resorting to court proceedings. The Service Charge Statement will (except for obvious error) become binding on the parties four months after it is delivered to the Tenant or (if later) once any dispute relating to it and arising during that period has been settled or decided.<sup>102</sup>

## 6. **Variation in the proportion of the service charge payable<sup>103</sup>**

6.1 In calculating the [Tenant's Proportion][Service Charge] for any of the Services, the Landlord's surveyor may make any adjustment that is fair and reasonable in all the circumstances, having regard to the relative degree of benefit obtained by the Tenant and other tenants at the Centre from those Services, including by dividing the services and charges set out in **Part 3 of this Schedule** into separate categories and applying weighting to those categories to take into account differing uses or operating hours.

6.2 If there is any change in the extent of the Centre, the Landlord must, where it is appropriate to do so, vary the [Tenant's Proportion][Service Charge] as is reasonable to take account of that change but the [Tenant's Proportion][Service Charge] will not materially increase solely as a result of any change in the extent of the Centre.

6.3 The [Tenant's Proportion][Service Charge] must not be increased by reason only that any Lettable Units:

6.3.1 remain unlet;

6.3.2 are let on terms that do not require the tenant or other occupier to pay a service charge; or

6.3.3 are let on terms that cap the liability of any tenant or other occupier for service charge.

## **Part 2 Landlord's obligations**

### 1. **Provision of services**

1.1 The Landlord, acting reasonably and in the interests of good estate management:<sup>104</sup>

1.1.1 [must supply the Services in an efficient manner at all appropriate times; and

1.1.2 may vary, reduce or extend those Services.]

**OR**

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<sup>102</sup> The Tenant has 4 months to challenge a service charge statement before it becomes binding. Traditionally there has been no right of challenge, unless there was a clear error, but that is considered unjust. A reference to alternative dispute resolution is consistent with the Service Charge Code.

<sup>103</sup> Refer to "Tenant's Proportion" only where floor weighting applies to the service charge calculations. See also the definitions of "Gross Internal Area", "Service Charge", "Tenant's Proportion" and "Weighted Area" and **Part 5 of Schedule 3**.

<sup>104</sup> Consider whether there should be core services that the Landlord should be under an obligation to provide and non-core services that the Landlord may provide. If the Landlord is under an obligation to provide only core services, consider which services should be core services and which services should be discretionary.

- 1.1.3 [must supply the Services listed in **paragraphs 1 to [NUMBER] of Part 3** in an efficient manner at all appropriate times; and
- 1.1.4 may supply all or any of the remaining Services listed in **Part 3**;
- 1.1.5 may vary, reduce or extend those Services.]

## 2. **Landlord's rights and responsibilities**

### 2.1 The Landlord:

- 2.1.1 may from time to time employ such agents, contractors or others as the Landlord decides;
- 2.1.2 will not be responsible for any interruption in the supply of the Services due to any circumstances outside the Landlord's control or due to any necessary maintenance, repair, replacement, renewal, servicing, inspection or testing, but must take ~~all~~ reasonable steps to restore the supply as soon as reasonably practicable; [and]
- 2.1.3 must take into consideration the administrative, accounting, procurement, management and operational provisions of the Service Charge Code for so long as it is in effect insofar as it is:<sup>105</sup>
  - (a) reasonably practicable to do so;
  - (b) consistent with the Landlord's obligations under this Lease; and
  - (c) consistent with the economic and efficient management of the Centre (taking into consideration all the circumstances including the terms of the leases of other Lettable Units); [and]
- 2.1.4 must take into consideration current practice in estate management if the Service Charge Code is no longer published[.][; and]
- 2.1.5 [must net off the Centre Contribution for any accounting period against the Service Costs for the same accounting period.]

- 2.2 [The Landlord will ~~use~~take reasonable ~~endeavours~~steps to notify the Tenant in advance of the service charge budget for each accounting period and of any material changes in the service charge budget that subsequently arise.]

## **Part 3 Services and charges**

1. Repairing (and by way of repair, renewing, rebuilding and replacing), decorating, maintaining and cleaning the foundations, roof, structure and exterior of the Centre and all Common Parts and Conducting Media.
2. Repairing (and, by way of repair, renewing, rebuilding, and replacing), decorating, maintaining and cleaning any facilities (including means of access, Conducting Media, party walls and other boundary structures) used in common between the Centre and any adjoining premises.
3. Lighting, heating, [providing air-conditioning to] and ventilating the Common Parts.
4. Lighting the exterior of the Centre and any facilities used in common between the Centre and any adjoining premises.
5. Providing hot and cold water to, and maintaining operational supplies in, the toilets in the Common Parts.
6. Supply Costs incurred in providing the Services.

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<sup>105</sup> There is deliberately no absolute obligation to comply with the Code. Consider the extent to which the Landlord is happy to comply with the obligations in this paragraph and in **paragraph 2.1.5**.

7. All existing and future rates, taxes, duties, charges and financial impositions charged on the Common Parts or the Centre as a whole (and a fair proportion of those levied on the Centre along with any adjoining premises).
8. Providing, inspecting, maintaining (including by maintenance contracts and insurance against sudden and unforeseen breakdown), repairing, renewing, replacing, upgrading and operating:
  - (a) all plant, machinery, apparatus and vehicles used in providing the Services and all signage in the Common Parts; and
  - (b) security, fire fighting and fire detection equipment (excluding portable fire extinguishers in the Premises), fire alarm systems, public address systems, telecommunications systems, closed circuit television systems and traffic control and all other Centre Management Systems.
9. Employing or procuring all staff (including remuneration, incidental benefits and all associated costs and overheads) for the management and security of the Centre and otherwise in connection with the Services.
10. Providing accommodation for staff, plant, furniture, equipment and vehicles used in providing the Services, and all outgoings on them.

11. Employing or procuring agents, contractors or others as the Landlord decides in connection with the Services.

~~11.12.~~ Storing, compacting, recycling and disposing of refuse.

~~12.13.~~ Planting, replanting and maintaining landscape features in the Common Parts.

~~13.14.~~ Providing customer service facilities for visitors to the Centre.

~~14.15.~~ Pest and infection control.

~~15.16.~~ Gritting, and clearing snow from, the Common Parts.

~~16.17.~~ Promoting and advertising the Centre and staging activities and exhibitions within the Centre.

~~17.18.~~ Providing seasonal decorations within the Centre.

~~18.19.~~ Carrying out any works and providing and maintaining all facilities that are required under any Act or by insurers in relation to the Centre.

~~19.20.~~ Providing any further services for maintaining and securing the amenities of the Centre.

~~20.21.~~ Managing and administering service charge accounts for the Services and the Centre including, where relevant, certifying, examining or auditing those accounts.

~~21.22.~~ Auditing health and safety requirements for the Centre and, where required by law or reasonable and cost-effective to do so, implementing the recommendations of that audit.

~~22.23.~~ Auditing disabled access requirements for the Centre and, where required by law or reasonable and cost-effective to do so, implementing the recommendations of that audit.

~~23.24.~~ Auditing the Environmental Performance of the Centre and, where reasonable and cost-effective to do so, implementing the recommendations of any environmental management plan the Landlord has for the Centre from time to time.

~~24.25.~~ Interest costs reasonably incurred by the Landlord on borrowing from a UK clearing bank or, if the Landlord uses its own moneys, an amount equal to the interest costs that would have been incurred if the Landlord had borrowed from a UK clearing bank at reasonable commercial rates. Interest costs will be reasonably incurred under this paragraph if:

- (a) the Landlord has to meet an immediate liability where the service charge funds held by the Landlord are insufficient for that purpose and the shortfall does not result from any caps on

the amount of service charge recoverable, any non-payment of service charges by other tenants or any unlet Lettable Unit; or

- (b) the Landlord decides at its absolute discretion to incur service charge expenditure in one accounting period and recover that expenditure over two or more accounting periods.

#### **Part 4 Service Charge Exclusions**

1. Costs arising from any damage or destruction to the Centre caused by an Insured Risk or an Uninsured Risk.
2. Capital costs of the construction, alteration, redevelopment or extension of the Centre.
3. Costs of upgrading, innovation or improvement resulting from any repair, maintenance, reinstatement, rebuilding or replacement, but this will not prevent the Landlord including costs within the Service Costs where they arise:
  - (a) where an item is to be replaced by way of repair and the replacement is broadly the modern day or up-to-date equivalent of what was there previously;
  - (b) where the Landlord considers replacement to be more economical than repair (and the Landlord is entitled to take into consideration the medium/long-term benefits of replacement);
  - (c) where an item has to be replaced or installed to comply with any Act or the requirements of the Insurers; or
  - (d) where replacement or renewal is reasonable and cost-effective and will reduce operating costs for the benefit of the tenants of the Lettable Units[ or improve for the tenants the Environmental Performance of the Centre].
4. Costs of any unlet Lettable Unit.
5. Rent collection costs.
6. Costs incurred in dealing with any lettings or rent reviews at the Centre.
7. Unrecovered costs due from another tenant of the Centre.
8. Costs incurred in dealing with the Landlord's interest in the Centre, including the costs of advertising and promotional or publicity activities relating to any proposed dealing with the Landlord's interest in the Centre.
9. [Costs incurred in running and maintaining any Car Park at the Centre where parking is charged for and the Landlord keeps the charges.<sup>106</sup>]

#### **Part 5 Weighting<sup>107</sup>**

##### **1. Discounting of the Gross Internal Area**

The Gross Internal Area of each Lettable Unit is ascertained and then discounted as set out below:

<b>Gross Internal Area of Units in Metres Squared</b>	<b>Percentage Multiplier</b>
[First 500 square metres (5,382 square feet)]	[100]

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<sup>106</sup> This must be considered carefully on a centre by centre basis. Where costs are to be excluded and the Landlord is to keep the charges the definition of Centre Contribution will need to exclude those charges. If car park charges are to be included in the definition of Centre Contribution, this **paragraph 9** should be deleted.

<sup>107</sup> Include **Part 5** only where floor weighting applies to the service charge calculations. See also the definitions of "Gross Internal Area", "Service Charge", "Tenant's Proportion" and "Weighted Area" and **paragraph 6 of Part 1 of Schedule 3**.

[Next 1,000 square metres (10,764 square feet)]	[80]
[Next 2,000 square metres (21,528 square feet)]	[60]
[Next 1,000 square metres (10,764 square feet)]	[50]
Remainder	[40]

2. **[Effect of underletting on discounting]**

If the Tenant underlets part of the Premises then the Tenant's Proportion will be recalculated on the basis that each part underlet by the Tenant and the part (if any) retained by the Tenant will be separately discounted in accordance with the table set out above.]

## 4 SCHEDULE 4

### Insurance and Damage Provisions

#### 1. Tenant's insurance obligations

1.1 The Tenant must pay on demand:

1.1.1 a fair and reasonable proportion of:

- (a) the sums the Landlord pays<sup>108</sup> to comply with **paragraphs 2.1.1 and 2.1.2**;
- (b) if not recovered through the service charge, the sums the Landlord pays to insure all plant, machinery, apparatus and vehicles used in providing the Services;
- (c) the cost of valuations of the Centre and the Premises for insurance purposes made not more than once a year; and
- (d) the amount of any excess or deductible under any insurance policy that the Landlord incurs or will incur in complying with **paragraphs 2.3 and 2.4**;

1.1.2 the whole of the sums the Landlord pays for insuring loss of the Main Rent and Service Charge for the Risk Period;

1.1.3 a sum equal to the amount that the insurers refuse to pay following damage or destruction by an Insured Risk to the Centre because of the Tenant's act or failure to act; and

1.1.4 any additional or increased premiums that the insurers may require as a result of the carrying out or retention of any Permitted Works or the Tenant's or any lawful occupier's use of the Premises.

1.2 The Tenant must comply with the requirements of the insurers and must not do anything that may invalidate any insurance.

1.3 The Tenant must not use the Premises for any purpose or carry out or retain any Permitted Works that may make any additional premium payable for the insurance of the Premises or the Centre, unless it has first agreed to pay the whole of that additional premium.

1.4 The Tenant must notify the Landlord as soon as practicable after it becomes aware of any damage to or destruction of the Premises by any of the Insured Risks or by an Uninsured Risk.

1.5 The Tenant must keep insured, in a sufficient sum and with a reputable ~~insurance company~~ [insurer](#), public liability risks relating to the Premises.

#### 2. Landlord's insurance obligations

2.1 The Landlord must insure (with a reputable ~~insurance company~~ [insurer](#)):

2.1.1 the Centre against the Insured Risks in its full reinstatement cost (including all professional fees and incidental expenses, debris removal, site clearance and irrecoverable VAT);

2.1.2 against public liability relating to the Centre; and

2.1.3 loss of the Main Rent and Service Charge for the Risk Period,

subject to all excesses, limitations and exclusions as the insurers may impose and otherwise on the insurer's usual terms.

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<sup>108</sup> Note that **clause 2.11** already requires the amounts to be reasonable and proper.

- 2.2 In relation to the insurance, the Landlord must:
- 2.2.1 procure the Tenant's interest in the Premises is noted either specifically or generally on the policy;
  - 2.2.2 take reasonable steps to procure that the insurers waive any rights of subrogation they might have against the Tenant (either specifically or generally);
  - 2.2.3 notify the Tenant promptly of all material variations; and
  - 2.2.4 provide the Tenant with a summary of its main terms upon the Tenant's written request.
- 2.3 The Landlord must take reasonable steps to obtain any consents necessary for the reinstatement of the Centre following destruction or damage by an Insured Risk.
- 2.4 Where it is lawful to do so, the Landlord must reinstate the Centre following destruction or damage by an Insured Risk. Reinstatement need not be identical if the replacement is similar in size, quality and layout.
- 2.5 Nothing in this **paragraph 2** imposes any obligation on the Landlord to insure or to reinstate tenant's fixtures forming part of the Premises or the Centre.
- 2.6 The Landlord's obligations under **paragraphs 2.3 and 2.4** will not apply:
- 2.6.1 unless and until the Tenant has paid the amounts referred to in **paragraph 1.1.1(d)** and, where applicable, **paragraph 1.1.3**; or
  - 2.6.2 if the Landlord notifies the Tenant under **paragraph 4.1** that it ends the Lease.
- 2.7 If there is destruction or damage to the Centre by an Uninsured Risk that leaves the whole or substantially the whole of the Premises unfit for occupation and use or inaccessible and the Landlord notifies the Tenant within 12 months afterwards that the Landlord wishes to reinstate, **paragraphs 2.3 and 2.4** will then apply as if the damage or destruction had been caused by an Insured Risk.
- 2.8 Subject to the insurance premiums being reasonable and proper and reasonably and properly incurred, the Landlord will be entitled to retain all insurance commissions for its own benefit.
3. **Rent suspension**
- 3.1 **Paragraph 3.2** will apply if the Centre is destroyed or damaged by any Insured Risk [or Uninsured Risk]<sup>109</sup> so that the Premises are unfit for occupation or use or inaccessible. **Paragraph 3.2** will not apply to the extent that the Landlord's insurance has been vitiated or payment of any policy moneys refused because of anything the Tenant does or fails to do and the Tenant has not complied with **paragraph 1.1.3**.
- 3.2 Subject to **paragraph 3.1**, the Main Rent and Service Charge or a fair proportion of them, will not be payable from and including the date of damage or destruction until the earliest of:
- 3.2.1 the date that the Premises are again fit for occupation and use, accessible and ready to receive ~~the Tenant's~~tenant's fitting out works;
  - 3.2.2 the end of the Risk Period; and
  - 3.2.3 the End Date.
- 3.3 If **paragraph 3.2** applies before the Rent Commencement Date, the ~~date that the Main Rent becomes payable will be postponed for the same number of days as the~~ number of days between the date of the damage or destruction and the ~~date the rent suspension ends~~Rent Commencement Date (or where only a proportion of the Main Rent is or would have been suspended, ~~the~~

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<sup>109</sup> Consider whether and from which date rent suspension should apply following uninsured damage.

~~postponement will be for an equivalent proportion of those days)-) will be added to the date the rent suspension ends and the resulting date will become the Rent Commencement Date.~~

3.4 If **paragraph 3.2** applies:

3.4.1 the Landlord must refund to the Tenant, as soon as reasonably practicable, a due proportion of any Main Rent and Service Charge paid in advance that relates to any period on or after the date of damage or destruction; and

3.4.2 the Tenant must pay to the Landlord on demand the Main Rent and Service Charge for the period starting on the date they again become payable to but excluding the next Rent Day.

3.5 Any dispute about the application of this **paragraph 3** will be decided at the request of either party by a single arbitrator under the Arbitration Act 1996.

#### 4. **Termination**

4.1 If there is destruction or damage to the Centre that leaves the whole or substantially the whole of the Premises unfit for occupation and use or inaccessible:

4.1.1 if the damage or destruction is caused by an Uninsured Risk and:

(a) the Landlord does not notify the Tenant within 12 months after the damage or destruction that the Landlord wishes to reinstate, this Lease will end on the last day of that 12 month period; or

(b) the Landlord notifies the Tenant that the Landlord does not wish to reinstate, this Lease will end on the date of that notification by the Landlord;

4.1.2 if, when the Risk Period ends, the Centre has not been reinstated sufficiently so that Premises are again fit for occupation and use and accessible and ready to receive tenant's fitting out works, either the Landlord or the Tenant may end this Lease immediately by notifying the other at any time after the end of the Risk Period but before such reinstatement has been completed. The exercise of this right by the Tenant is subject to the Tenant complying with **paragraph 1.1.1(d)** and, where applicable, **paragraph 1.1.3**.

4.2 For the purposes of **paragraphs 3.2.2 and 4.1.2**, if the damage or destruction is caused by an Uninsured Risk, the Risk Period will be treated as beginning on the date the Landlord notifies the Tenant of its wish to reinstate under **paragraph 2.7**.

4.3 If this Lease ends under **paragraph 4.1**:

4.3.1 that will not affect the rights of any party for any prior breaches;

4.3.2 the Tenant must give vacant possession of the Premises to the Landlord; and

4.3.3 the Landlord will be entitled to retain all insurance moneys.

## 5 SCHEDULE 5

### Title Matters

#### 1. [Variations to the title guarantee<sup>110</sup>

1.1 For the purposes of section 6(2) of the 1994 Act:

1.1.1 all entries made in any public register that a prudent tenant would inspect will be treated as within the actual knowledge of the Tenant;

1.1.2 section 6(3) of the 1994 Act will not apply; and

1.1.3 the Tenant will be treated as having actual knowledge of any matters that would be disclosed by an inspection of the Premises.

1.2 The title guarantee will not apply in respect of the title to tenant's fixtures.

1.3 [The Tenant will be responsible for the Landlord's costs incurred in complying with the covenant set out in section 2(1)(b) of the 1994 Act.]

1.4 [The covenants set out in section 2 of the 1994 Act will not imply any obligation on the Landlord to do anything to enable the Tenant to obtain any title at the Land Registry other than a good leasehold title.<sup>111</sup>]

1.5 [The covenants set out in section 4(1)(b) of the 1994 Act will not extend to any breach of the tenant's covenants in the Head Lease relating to the physical state of the Premises or the Centre.<sup>112</sup>]

#### 2. Register entries

The matters contained or referred to in title number[S] [TITLE NUMBER(S)] as shown on the attached official copy entries<sup>113</sup> other than [ENTRY NUMBERS].

#### 3. Other deeds and documents

The matters contained or referred to in the following deeds and documents:

Date	Document	Parties
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<sup>110</sup> Include this paragraph only where the Landlord leases the Premises with a full or limited title guarantee.

<sup>111</sup> Include this paragraph only where the Landlord's title to the Premises is not registered at HM Land Registry.

<sup>112</sup> Include this paragraph only where the Landlord holds the Premises under the Head Lease.

<sup>113</sup> Note that with computerised registers, the entry numbers may change if changes are made to the register. It is therefore helpful to attach the relevant official copies of the title to the Lease so that it is clear which entries are being referred to.

## 6 SCHEDULE 6

### Works<sup>114</sup>

#### Part 1 Permitted Works

##### 1. Defined terms

This **Schedule 6** uses the following definitions:

##### “CDM Regulations”

the Construction (Design and Management) Regulations 2015.

##### “Consents”

all necessary permissions, licences and approvals for the Permitted Works under the Planning Acts, the building and fire regulations, and any other statute, bye law or regulation of any competent authority and under any covenants or provisions affecting the Premises or the Centre and as otherwise required from owners, tenants or occupiers of any part of the Centre or any adjoining premises.

##### 2. Tenant’s obligations in relation to Permitted Works

###### 2.1 Before starting any Permitted Works the Tenant must:

- 2.1.1 obtain and provide the Landlord with copies of any Consents that are required before they are begun;
- 2.1.2 fulfil any conditions in the Consents required to be fulfilled before they are begun;
- 2.1.3 comply with its obligations in **clause 4.21.4**;
- 2.1.4 notify the Landlord of the date on which the Tenant intends to start the Permitted Works;
- 2.1.5 provide the Landlord with any information relating to the Permitted Works as may be required by its insurers; and
- 2.1.6 ensure that it or its building contractor has put in place public liability and employers’ liability insurance of at least £[5] million in respect of each claim and provided the Landlord with a summary of the main terms of the insurance and evidence that the premiums have been paid.

###### 2.2 If it starts any Permitted Works, the Tenant must carry out and complete them:

- 2.2.1 diligently and without interruption, and in any event before the End Date;<sup>115</sup>
- 2.2.2 in accordance with any drawings, specifications and other documents relating to the Permitted Works that the Landlord has approved;
- 2.2.3 in a good and workmanlike manner and with good quality materials;

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<sup>114</sup> This Schedule sets out the standard provisions that will apply when the Tenant carries out works. The inclusion of this Schedule will enable the Landlord to grant consent to Tenant’s works of a routine nature by reference to the obligations in this Schedule without the need for a detailed licence for alterations.

<sup>115</sup> If you want the Tenant to complete any works to the Premises within a set period after work has commenced, you will need to provide for this specifically in this paragraph.

- 2.2.4 [in accordance with the reasonable principles, standards and guidelines set out in any relevant guide or handbook published by the Landlord from time to time for tenant's works carried out at the Centre;]
- 2.2.5 in compliance with the Consents and all Acts (including the Planning Acts) and with the requirements of the insurers of the Centre and the Premises and (where applicable) of any competent authority ~~and the relevant:~~ or utility provider;
- ~~(a) — electricity supply company;~~
- ~~(b) — gas supply authority;~~
- ~~(c) — water authority; and~~
- ~~(d) — fire authority;~~
- 2.2.6 with as little interference as reasonably practicable to the owners and occupiers of any other parts of the Centre or any adjoining premises; and
- 2.2.7 in compliance, to the extent applicable, with the CDM Regulations.
- 2.3 The Tenant must make good immediately any physical damage caused by carrying out the Permitted Works.
- 2.4 The Tenant must permit the Landlord to enter the Premises to inspect the progress of the Permitted Works.
- 2.5 Until practical completion of the Permitted Works, the Tenant must:
- 2.5.1 insure any Permitted Works for their full reinstatement cost (including professional fees) against loss or damage by the Insured Risks with a reputable ~~insurance company~~ insurer and provide the Landlord with a summary of the main terms of the insurance; and
- 2.5.2 reinstate any of the Permitted Works that are damaged or destroyed before their completion.
- 2.6 Where the Landlord has given the Landlord's consent to any Permitted Works, the Tenant must comply with any additional obligations in relation to those Permitted Works that the Landlord lawfully imposes on the Tenant in giving the Landlord's consent.<sup>116</sup>
- 2.7 As soon as reasonably practicable following completion of the Permitted Works the Tenant must:
- 2.7.1 notify the Landlord of their completion;
- 2.7.2 obtain any Consents that are required on their completion;
- 2.7.3 remove all debris and equipment used in carrying out the Permitted Works;
- 2.7.4 notify the Landlord of the cost of the Permitted Works;
- 2.7.5 permit the Landlord to enter the Premises to inspect the completed Permitted Works;
- 2.7.6 supply the Landlord with two complete sets of as-built plans showing the Permitted Works; and
- 2.7.7 ensure that the Landlord is able to use and reproduce the as-built plans for any lawful purpose.

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<sup>116</sup> If you want to impose an obligation on the Tenant to begin any works to which Landlord's consent has been given, you will need to provide for this specifically in this paragraph.

- 2.8 If the CDM Regulations apply to the Permitted Works, the Tenant must:
- 2.8.1 comply with them and ensure that any person involved in the management, design and construction of the Permitted Works complies with their respective obligations under the CDM Regulations;
  - 2.8.2 if the Landlord would be treated as a client for the purposes of the CDM Regulations, agree to be treated as the only client in respect of the Permitted Works; and
  - 2.8.3 on completion of the Permitted Works provide the Landlord with a copy of any health and safety file relating to the Permitted Works and deliver the original file to the Landlord at the End Date.
- 2.9 If the Permitted Works invalidate or materially adversely affect an existing EPC or require the commissioning of an EPC, the Tenant must (at the Landlord's option):
- 2.9.1 obtain ~~a new~~an EPC from an assessor approved by the Landlord and give the Landlord written details of the unique reference number for that ~~EPC~~CPC; or
  - 2.9.2 pay the Landlord's costs of ~~doing so~~obtaining an EPC.

### 3. No warranty relating to Permitted Works

- 3.1 The Landlord gives no express or implied warranty (and the Tenant acknowledges that the Tenant must satisfy itself):
- 3.1.1 as to the suitability, safety, adequacy or quality of the design or method of construction of any Permitted Works;
  - 3.1.2 that any Permitted Works may lawfully be carried out;
  - 3.1.3 that the structure or fabric of the Premises or the Centre is able to accommodate any Permitted Works; or
  - 3.1.4 that any of the services supplying the Premises or the Centre will either have sufficient capacity for or otherwise not be adversely affected by any Permitted Works.

## Part 2 Form of request to ascertain need to remove Permitted Works

**Note:** In the actual Request submitted by the Tenant the italicised words are to be deleted and replaced by the information that they direct should be inserted

To:

*[Insert name of current landlord and address for service]*

**IMPORTANT : THIS REQUEST NEEDS URGENT CONSIDERATION TO ENSURE THAT YOUR RIGHTS ARE PRESERVED**

Dear Sirs

*[Insert address of premises demised]*

This Request uses the following definitions:

#### "Address for Service"

*[insert address in the UK to which the Landlord is to respond].*

#### **"Lease"**

[a lease] [an underlease] of the Premises dated *[insert date of lease]* and made between *[insert parties to lease]*.

**“Permitted Works”**

“Permitted Works” as defined in the Lease.

**“Premises”**

the premises briefly described above, but more particularly defined in the Lease.

**~~“Us / We”~~**

~~the tenant under the Lease, making this Request.~~

**~~“You”~~**

~~the landlord under the Lease, the person to whom We make this Request.~~

**~~“Our Address for Service”~~**

~~[insert address in the UK to which the Landlord is to respond].~~

1. Please tell ~~Us~~us in writing by a notice sent or delivered to ~~Our~~our Address for Service which, if any, of the Permitted Works ~~You~~you require ~~Us~~us to remove under **clause 4.14.1(c)** of the Lease.
2. Your attention is drawn to **clause 4.14.3** of the Lease that releases ~~Us~~us from any obligation to remove any Permitted Works ~~which You~~that you have not, within [6] weeks of receiving this Request, notified us that ~~You~~you require to be removed in accordance with **paragraph 1** above.

Yours faithfully

[duly authorised for and on behalf of]

[Insert name of current tenant]

## 7 SCHEDULE 7

### Sustainability<sup>117</sup>

#### 1. Co-operation to improve Environmental Performance

1.1 The Landlord and the Tenant confirm that they:

1.1.1 wish to promote and improve the Environmental Performance of the Premises and the Centre; and

1.1.2 wish to co-operate with each other (without legal obligation) to identify appropriate strategies for the improvement of the Environmental Performance of the Premises and the Centre.

#### 2. Environmental forum

2.1 The Landlord [may][must] provide an environmental forum (the "**Forum**") that will meet on a regular basis to:

2.1.1 consider the adequacy and improvement of data sharing on energy and water use, waste production and recycling;

2.1.2 review the Environmental Performance of the Lettable Units and the Centre;

2.1.3 agree targets and strategies for a travel plan for travelling to and from the Centre; and

2.1.4 agree targets and strategies to improve the Environmental Performance of the Lettable Units and the Centre.

2.2 The Forum may take any form that affords an appropriate means of communication and exchange of views, whether by meeting in person or not.

2.3 The Landlord and the Tenant will each nominate a suitable person to participate in the Forum. They will try to ensure that their nominees attend and participate in any Forum meetings or discussions of which appropriate advance notice has been given.

2.4 All tenants of the Centre will be entitled to attend and take part in the Forum.

2.5 [The Landlord and the Tenant may agree to allow third parties to participate in the Forum for a specified period or for a specified purpose.]

2.6 [The Landlord will try to ensure that a representative of any managing agents appointed by the Landlord attends or participates in any Forum meetings or discussions of which appropriate advance notice has been given.]

2.7 Where any of the issues considered, reviewed or agreed in the Forum relate exclusively to the Premises, either the Landlord or the Tenant may request that these are discussed between them and their authorised agents only (and not with any other permitted participants in the Forum).

#### 3. Data sharing

3.1 The Landlord and the Tenant will share the Environmental Performance data they hold relating to the Premises and the Centre. This data will be shared on a regular basis [not less frequently than quarterly] with each other, with any managing agents appointed by the Landlord and with any third party that the Landlord and the Tenant agree should receive the data.

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<sup>117</sup> If the parties want to include more detailed sustainability provisions, refer to the provisions in the Better Buildings Partnership's **Green Lease Toolkit**. This Schedule is not intended to impose onerous obligations in relation to sustainability issues but is intended to facilitate a discussion between the parties about these issues.

- 3.2 Unless they are under a statutory disclosure obligation, the Landlord and the Tenant must keep the data shared under this clause confidential. They will use that data only for the purpose of:
- 3.2.1 monitoring and improving the Environmental Performance of the Premises and the Centre; and
  - 3.2.2 measuring the Environmental Performance of the Premises and the Centre against any agreed targets.
- 3.3 Nothing in this **paragraph 3** will oblige the Landlord to disclose to the Tenant Environmental Performance data received from any other tenants or occupiers of the Centre.
- 3.4 The Landlord will not disclose Environmental Performance data provided by the Tenant to any other tenants or occupiers of the Centre.
- 3.5 The Landlord must ensure any managing agents appointed by the Landlord are placed under a similar obligation to keep shared data confidential on the same terms as this **paragraph 3**.

#### ~~4. Energy Performance Certificates~~

- ~~4.1 The Tenant must give the Landlord written details on request of the unique reference number of any EPC the Tenant obtains or commissions in respect of the Premises.~~
- ~~4.2 The Tenant must cooperate with the Landlord, so far as is reasonably necessary, to allow the Landlord to obtain any EPC for the Premises or the Centre and:~~
- ~~4.2.1 provide the Landlord (at the Landlord's cost) with copies of any plans or other information held by the Tenant that would assist in obtaining that EPC; and~~
  - ~~4.2.2 allow such access to the Premises to any energy assessor appointed by the Landlord as is reasonably necessary to inspect the Premises for the purposes of preparing any EPC.~~
- ~~4.3 The Landlord must give the Tenant written details on request of the unique reference number of any EPC the Landlord obtains or commissions in respect of the Premises or the Centre.~~

#### 5.4. Alterations

- 5.14.1 Both the Landlord and the Tenant will take into consideration any impact on the Environmental Performance of the Premises and the Centre from any proposed works to or at the Premises[ or the Centre].
- 5.24.2 The Tenant agrees to allow the Landlord (if the Landlord so wishes and upon reasonable prior notice) to install, at the Landlord's own cost, separate metering of utilities used in the Common Parts and the Premises[ and the Landlord agrees to allow the Tenant to install separate [sub-]metering of the utilities used in the Premises<sup>118</sup>].

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<sup>118</sup> The installation of a completely separate metered supply for the Premises may involve costly works to the remainder of the Landlord's property to establish a new supply and install the meters. Consider whether this right should be given to the Tenant.

## 8 SCHEDULE 8

### Underletting

#### 1. Defined terms

This **Schedule 8** uses the following definitions:

#### “Approved Underlease”

an underlease approved by the Landlord and, subject to any variations agreed by the Landlord in its absolute discretion:

- (a) [for a term of not less than [NUMBER] years calculated from the date on which the underlease is completed;]
- (b) lawfully excluded from the security of tenure provisions of the 1954 Act [if it creates an underletting of a Permitted Part];
- (c) granted without any premium being received by the Tenant;
- (d) reserving a market rent, taking into account the terms of the underletting;
- (e) containing provisions for rent review at [five yearly] intervals and otherwise on the same terms as in **Schedule 2**;<sup>119</sup>
- (f) containing provisions for change of use and alterations corresponding to those in this Lease;
- (g) prohibiting the assignment of part only of the Underlet Premises;
- (h) allowing assignment of the whole of the Underlet Premises with the prior consent of the Landlord on terms corresponding to those in this Lease;
- (i) [containing a covenant by the Undertenant not to create any sub-underlease of the whole or any part of the Underlet Premises] **OR** [containing a covenant by the Undertenant not to create any sub-underlease of the whole of the Underlet Premises without the prior written consent<sup>120</sup> of the Landlord and the Tenant and a covenant by the Undertenant not to create any sub-underlease of any part of the Underlet Premises] **OR** [containing a covenant by the Undertenant not to create any sub-underlease of the whole or any part of the Underlet Premises without the prior written consent of the Landlord and the Tenant];<sup>121</sup>
- (j) [containing provisions requiring any Sub-Underlease to contain an absolute prohibition on the creation of further underleases of whole or part [except where the Sub-Underlease is of the whole of the Premises when the Sub-Underlease may contain provisions permitting the creation of further underleases on the same terms as **paragraph (j)** but with the additional provision that no further underleases of whole or part will be created out of those further underleases];]
- (k) [containing covenants by the Sub-Undertenant not to assign the whole of the Sub-Underlet Premises without the prior written consent of the Landlord, the Tenant and the Undertenant and not to assign part of the Sub-Underlet Premises;]

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<sup>119</sup> Some landlords may require the rent review dates in the underlease to coincide with those in this Lease even if this means that the first rent review falls within the first five years of the grant of the underlease.

<sup>120</sup> Although the interpretation clause in this Lease states that references to a consent are to a prior written consent, the full form of wording has been included in this **paragraph (j)** and in **paragraph (l)** as the relevant interpretation clause may not be included in the underlease.

<sup>121</sup> Take specific instruction on whether an undertenant should have the right to sub-underlet. Paragraphs (k) and (l) will not be required if sub-underletting is prohibited.

- (l) containing provisions requiring the Undertenant to pay as additional rent the whole or, in the case of an Underlease of a Permitted Part, a due proportion, of the Insurance Rent, Service Charge and other sums, excluding the Main Rent, payable by the Tenant under this Lease;
- (m) if the Underlease is excluded from the security of tenure provisions of the 1954 Act, containing any other provisions that are reasonable having regard to the terms of this Lease and the nature of the proposed Underlease; and
- (n) if the Underlease is not excluded from the security of tenure provisions of the 1954 Act, containing other provisions corresponding with those in this Lease;

**“Approved Undertenant”<sup>122</sup>**

a person approved by the Landlord and who has entered into a direct deed with the Landlord agreeing to:

- (a) comply with the terms of the Approved Underlease; and
- (b) procure that any proposed assignee of the Underlet Premises enters into a direct deed in the same terms as set out in this definition of Approved Undertenant;

**[“Permitted Part”**

any part of the Premises that the Landlord approves;]

**“Sub-Underlease”**

any sub-underlease created out of an Underlease;

**“Sub-Undertenant”**

any tenant under a Sub-Underlease;

**“Underlease”**

the underlease granted following the approval of the Approved Underlease;

**“Underlet Premises”**

the premises let by an Underlease; and

**“Undertenant”**

the Approved Undertenant to whom the Tenant grants an Underlease.

**2. Right to underlet**

- 2.1 [Subject to **paragraph 2.2**, the][The] Tenant may, with the Landlord’s consent, underlet the whole of the Premises [or the whole of a Permitted Part] by an Approved Underlease to an Approved Undertenant.
- 2.2 [The Tenant must not allow more than [NUMBER] people (including the Tenant) to have a legal right to occupy the Premises. Any Group Company of the Tenant[ and any Service Provider providing services to the Tenant at the Premises]<sup>123</sup> will count as the Tenant for the purposes of this paragraph.]

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<sup>122</sup> Consider whether the Landlord should have the right to receive a guarantee of the Approved Undertenant’s obligations.

<sup>123</sup> Delete the words in square brackets if the “Service Provider” provisions have been deleted from **clause 4.17.8**.

3. **Obligations in relation to underleases**

- 3.1 The Tenant must not waive any material breach by an Undertenant of any terms of its Underlease [or by a Sub-Undertenant of any terms of its Sub-Underlease].
- 3.2 The Tenant must not reduce, defer, accelerate or commute any rent payable under any Underlease.
- 3.3 On any review of the rent payable under any Underlease, the Tenant must:
  - 3.3.1 review the rent of the Underlease in compliance with its terms;
  - 3.3.2 not agree the reviewed rent (or the appointment of any third party to decide it) without the Landlord's approval;
  - 3.3.3 include in the Tenant's representations to any third party any representations that the Landlord may require; and
  - 3.3.4 notify the Landlord what the reviewed rent is within two weeks of its agreement or resolution by a third party.
- 3.4 The Tenant must not vary the terms or accept any surrender of any Underlease without the Landlord's approval.

Executed as a deed by the Landlord acting by )  
[a director and its secretary] or by [two directors]: )

Signature of Director  
Signature of Director/Secretary

Executed as a deed by the Tenant acting by )  
[a director and its secretary] or by [two directors]: )

Signature of Director  
Signature of Director/Secretary

[Executed as a deed by the Guarantor acting by )  
[a director and its secretary] or by [two directors]: )

Signature of Director  
Signature of Director/Secretary]

# Change Summary Report

**Comparison Date: 04/07/2016 09:43**

Original Document:

Name: MCL-RETAIL-07\_V1-1.docx  
Version: 1.0  
The document has had fields converted into text

Revised Document:

Name: MCL-RETAIL-07\_V1-2.docx  
Version: 6.0  
The document has had fields converted into text

	<b>Number of Changes</b>	<b>Mark-up</b>
Insertions	123	<a href="#">Sample Insert</a>
Deletions	125	<del>Sample Delete</del>
<b>Total Changes</b>	<b>248</b>	