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**INDEX LINKED RENT REVIEW PROVISIONS**

1. Drafting Notes
2. Introduction
	1. This precedent is prepared on the basis that the rent will be reviewed annually (or over a longer period) in line with changes in the All Items Retail Prices Index (RPI) or Consumer Prices Index (CPI). It should be altered to reflect any requirements that are specific to the property, parties and terms of the transaction.
	2. Another index may be used in place of the RPI or CPI. We recommend that if an alternative index is used, the index chosen is one that is freely available without cost to both the landlord and tenant.
3. Incorporation into the lease
	1. Amend the definition of “Rent Review Dates” in clause 1.1 of the lease to read:

“[DATE] [in each year of the Term] and “Rent Review Date” means the relevant Rent Review Date in the context in which it is used.”

* 1. Part 2 of this precedent should be used to replace the existing Schedule 2 (Rent Review) in the lease where the rent will be reviewed annually (or over a longer period) on a straight line basis.
	2. Part 3 of this precedent should be used to replace the existing Schedule 2 (Rent Review) in the lease where the rent will be reviewed every five years on a compound basis so that the rent is reviewed to the figure that would be achieved had the rent been reviewed annually on an indexed basis throughout that five year period.
1. Worked examples

Part 4 of this precedent contains worked examples showing how the index linked provisions work.

1. Revised Schedule 2 for straight line rent review on an annual basis
2. SCHEDULE ‎2

 Rent Review

1. Defined terms

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

**“Base Figure”**

1. on the first Rent Review Date, [FIGURE] (being the Index figure for the month [three][[1]](#footnote-1) months preceding the date of the Lease[[2]](#footnote-2));
2. on each succeeding Rent Review Date, the Current Figure for the preceding Rent Review Date;

**“Current Figure”**

the Index figure for the month [three][[3]](#footnote-3) months preceding the Rent Review Date; and

**“Index”**

the “all items” figure of the Index of [Retail] [Consumer] Prices published by the Office for National Statistics or any successor Ministry, Department or Government Agency.

1. Rent Review
	1. On each Rent Review Date, the Main Rent is to be reviewed to the higher of:
		1. the Main Rent reserved by this Lease immediately before that Rent Review Date; and
		2. the revised Main Rent (rounded up to the nearest £10)calculated in accordance with the following formula:



Where:

R is the revised Main Rent;

A is the Main Rent reserved immediately before the relevant review date;

C is the Current Figure; and

B is the Base Figure.

* 1. [If the formula produces an increase in the Main Rent of more than [PERCENT]% [or less than [PERCENT]%] then the increase will be limited to [PERCENT]% [or at least [PERCENT]%] as appropriate.][[4]](#footnote-4)
1. Notice of Main Rent

If the Main Rent is increased, the Landlord must notify the Tenant as soon as possible after the Rent Review Date.

1. Effect of delay in notifying the revised rent
	1. Following any Rent Review Date until the Landlord has notified the Tenant of the revised Main Rent:
		1. the Main Rent payable under this Lease immediately before that Rent Review Date will continue to be payable until the revised Main Rent has been notified to the Tenant;
		2. following the notification of the revised 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 revised Main Rent been notified before the Rent Review Date; and
		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 such instalment would have become payable to the date of payment. If not paid such sums will be treated as rent in arrear.
2. Changes in the Index
	1. If the Index is no longer published or if there is any material change in the way it is compiled or the date from which it commences then a new arrangement for indexation or a rebasing (the “Revised Indexation”) will be substituted for the calculation of the Main Rent to reflect increases in the cost of living on a similar basis to that originally set out in this Lease.
	2. If the parties are unable to agree a basis for the Revised Indexation then either of them may at any time request that the President of the Institute of Chartered Accountants in England and Wales appoints an arbitrator to do so. The arbitration must be conducted in accordance with the Arbitration Act 1996.
3. Time not of the essence

For the purpose of this Schedule ‎2 time is not of the essence.[[5]](#footnote-5)

1. Revised Schedule 2 for compound rent review on a five yearly basis
2. SCHEDULE ‎2

 Rent Review

1. Defined terms

This **Schedule**  uses the following definitions:

**“Base Figure”**

1. on the first Notional Rent Review Date, [FIGURE] (being the Index figure for the month [three][[6]](#footnote-6) months preceding the date of the Lease[[7]](#footnote-7));
2. on each succeeding Notional Rent Review Date, the Current Figure for the preceding Notional Rent Review Date;

**“Current Figure”**

the Index figure for the month [three][[8]](#footnote-8) months preceding the Notional Rent Review Date; and

**“Index”**

the “all items” figure of the Index of [Retail] [Consumer] Prices published by the Office for National Statistics or any successor Ministry, Department or Government Agency.

**“Notional Rent”**

for the first years of the Term, the Main Rent and, from each Notional Rent Review Date, the sum calculated in accordance with **paragraph** ;

**“Notional Rent Review Date”**

each anniversary of the Term Commencement Date.[[9]](#footnote-9)

1. Rent Review
	1. On each Notional Review Date, the Notional Rent is to be reviewed to the higher of:
		1. the Notional Rent immediately before that Rent Review Date; and
		2. the revised Notional Rent (rounded up to the nearest £10) calculated in accordance with the following formula:



Where:

R is the revised Notional Rent;

A is the Notional Rent immediately before the relevant review date;

C is the Current Figure; and

B is the Base Figure.

* 1. [If the formula produces an increase in the Notional Rent of more than [PERCENT]% [or less than [PERCENT]%] then the increase will be limited to [PERCENT]% [or at least [PERCENT]%] as appropriate.][[10]](#footnote-10)
	2. On each Rent Review Date, the Main Rent will be reviewed to the higher of:
		1. the Main Rent reserved by this Lease immediately before that Rent Review Date; and
		2. the Notional Rent calculated for the corresponding Notional Review Date.
1. Notice of Main Rent

If the Main Rent is increased, the Landlord must notify the Tenant as soon as possible after the Rent Review Date.

1. Effect of delay in notifying the revised rent
	1. Following any Rent Review Date until the Landlord has notified the Tenant of the revised Main Rent:
		1. the Main Rent payable under this Lease immediately before that Rent Review Date will continue to be payable until the revised Main Rent has been notified to the Tenant;
		2. following the notification of the revised 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 revised Main Rent been notified before the Rent Review Date; and
		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 such instalment would have become payable to the date of payment. If not paid such sums will be treated as rent in arrear.
2. Changes in the Index
	1. If the Index is no longer published or if there is any material change in the way it is compiled or the date from which it commences then a new arrangement for indexation or a rebasing (the “Revised Indexation”) will be substituted for the calculation of the Notional Rent to reflect increases in the cost of living on a similar basis to that originally set out in this Lease.
	2. If the parties are unable to agree a basis for the Revised Indexation then either of them may at any time request that the President of the Institute of Chartered Accountants in England and Wales appoints an arbitrator to do so. The arbitration must be conducted in accordance with the Arbitration Act 1996.
3. Time not of the essence

For the purpose of this Schedule ‎2 time is not of the essence.[[11]](#footnote-11)

1. Worked examples
2. Example of an annual rent review
	1. Assume a Lease granted at an initial rent of £50,000 on 1 January 2014 for a term of 6 years beginning on that date. Assume that the Index for December 2013 was 195 and that there are annual rent reviews. There are no caps or collars on the rent review.
	2. The first rent review is on 1 January 2015. Assume that the figure for the Index for December 2014 is 205:
		1. the relevant percentage is 100 times (205-195)/195 = 5.128205%; and
		2. the new Main Rent is £50,000 increased by this percentage = £52,570 (rounded up to the nearest £10).
	3. The second rent review is on 1 January 2016. Assume that the figure for the Index for December 2015 is 215:
		1. the relevant percentage is 100 times (215-205)/205 = 4.878048%; and
		2. the new Main Rent is £52,570 increased by this percentage = £55,140 (rounded up to the nearest ten pounds).
	4. The third rent review is on 1 January 2017. Assume that the figure for the Index for December 2016 is 210 (this is lower than the previous year but there has been no change in the Index that would justify the landlord substituting an alternative index):
		1. the relevant percentage is 100 times (210-215)/215. Because this produces a value less than zero, the relevant percentage is 0%; and
		2. the Main Rent is increased by 0%, and therefore remains at £55,140.
	5. The fourth rent review is on 1 January 2018. Assume that the figure for the Index for December 2017 is 218:
		1. the relevant percentage is 100 times (218-210)/210 = 3.809523%; and
		2. the new Main Rent is £55,140 increased by this percentage = £57,250 (rounded up to the nearest £10).
	6. The fifth and final rent review is on 1 January 2019. Assume that the figure for the Index for December 2018 is 225:
		1. the relevant percentage is 100 times (225-218)/218 = 3.211009%; and
		2. the new Main Rent is £57,250 increased by this percentage = £59,090 (rounded up to the nearest £10).
3. Example of compounded rent review
	1. Assume a Lease granted at an initial rent of £50,000 on 1 January 2014 for a term of 10 years beginning on that date. Assume that the Index for December 2013 was 195 and that there in one rent review in year 5 calculated on a compound basis. There are no caps or collars on the rent review.
	2. The first notional rent review is on 1 January 2015. Assume that the figure for the Index for December 2014 is 205:
		1. the relevant percentage is 100 times (205-195)/195 = 5.128205%; and
		2. the notional rent becomes £50,000 increased by this percentage = £52,570 (rounded up to the nearest £10). This sum does not become payable.
	3. The second notional rent review is on 1 January 2016. Assume that the figure for the Index for December 2015 is 215:
		1. the relevant percentage is 100 times (215-205)/205 = 4.878048%; and
		2. the new notional rent is £52,570 increased by this percentage = £55,140 (rounded up to the nearest ten pounds).
	4. The third notional rent review is on 1 January 2017. Assume that the figure for the Index for December 2016 is 210 (this is lower than the previous year but there has been no change in the Index that would justify the landlord substituting an alternative index):
		1. the relevant percentage is 100 times (210-215)/215. Because this produces a value less than zero, the relevant percentage is 0%; and
		2. the notional rent is increased by 0%, and therefore remains at £55,140.
	5. The fourth notional rent review is on 1 January 2018. Assume that the figure for the Index for December 2017 is 218:
		1. the relevant percentage is 100 times (218-210)/210 = 3.809523%; and
		2. the new notional rent is £55,140 increased by this percentage = £57,250 (rounded up to the nearest £10).
	6. The fifth notional rent review date is on 1 January 2018. Assume that the figure for the Index for December 2017 is 225:
		1. the relevant percentage is 100 times (225-218)/218 = 3.211009%; and
		2. the new notional rent is £57,250 increased by this percentage = £59,090 (rounded up to the nearest £10).
	7. As the fifth notional rent review date is also the Rent Review Date, the new Main Rent is the notional rent calculated for the corresponding notional rent review date. The Main Rent is therefore reviewed to £59,090.
	8. Had rent been reviewed on a straight line basis over the five year period rather than on a compounded basis the relevant calculation would have been:
		1. the relevant percentage would have been 100 times (225-195)/195 (the increase in the indeed over the five year period) = 15.3846154%; and
		2. the new Main rent would have been £50,000 increased by this percentage = £57,700 (rounded up to the nearest £10).
1. The reason for using a date three months before the rent review date is to ensure that there has been sufficient time for the relevant index figure to be published and avoid delays in implementing the rent review arising from the relevant figures being unavailable. [↑](#footnote-ref-1)
2. Check with client whether it should be the month three months preceding the term commencement date. If you do make the change, you need to make clear to Tenant’s solicitors when sending over draft that you have made an amendment. [↑](#footnote-ref-2)
3. This should match the figure used in the definition of “Base Figure”. [↑](#footnote-ref-3)
4. Include this provision where it has been agreed that there will be a cap or collar (or both) on any increases in the rent. [↑](#footnote-ref-4)
5. 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 such restrictions cease to have effect. [↑](#footnote-ref-5)
6. The reason for using a date three months before the rent review date is to ensure that there has been sufficient time for the relevant index figure to be published and avoid delays in implementing the rent review arising from the relevant figures being unavailable. [↑](#footnote-ref-6)
7. Check with client whether it should be the month three months preceding the term commencement date. If you do make the change, you need to make clear to Tenant’s solicitors when sending over draft that you have made an amendment. [↑](#footnote-ref-7)
8. This should match the figure used in the definition of “Base Figure”. [↑](#footnote-ref-8)
9. If the Rent Review Dates are not anniversaries of the Term Commencement Date, amend this definition so that the Notional Rent Review Dates will periodically coincide with the Rent Review Dates. [↑](#footnote-ref-9)
10. Include this provision where it has been agreed that there will be a cap or collar (or both) on any increases in the rent. [↑](#footnote-ref-10)
11. 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 such restrictions cease to have effect. [↑](#footnote-ref-11)