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**SERVICE CHARGE CAP PROVISIONS**

1. Drafting Notes
2. Introduction
	1. This precedent is prepared on the basis that the service charge cap will increase annually 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 “Service Charge” in clause 1.1 of the lease to read:

“[(subject to the provisions of **paragraph ‎6 of Part 1 and Part [5/6] of Schedule ‎3**) a fair proportion (calculated on a floor area basis or such other reasonable method as the Landlord from time to time decides)][the Tenant’s Proportion] of the Service Costs;”

* 1. Part 2 of this precedent should be included as an additional part of Schedule 3 (Service Charge) to the lease.
1. Additional wording for Schedule 3 (Service Charge)

PART [5/6]: service charge cap

1. Defined terms

This Part [5/6] uses the following definitions:

**“Base Figure”**

[FIGURE] (being the Index figure for the month [three][[1]](#footnote-1) months preceding the date of the Lease[[2]](#footnote-2));

**“Current Figure”**

the Index figure for the month [three][[3]](#footnote-3) months preceding the last day of the relevant accounting period;

**“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;

**“Initial Service Charge Cap”**

£[AMOUNT]; and

**“Service Charge Cap”**

1. for the first accounting period during the Term, the Initial Service Charge Cap; and
2. for each subsequent accounting period, whichever is the higher of:
	1. the Service Charge Cap for the preceding accounting period; and
	2. the figure calculated according to the following formula:



Where:

A is the Current Figure;

B is Base Figure; and

C is the Initial Service Charge Cap.

1. Service charge cap

The Service Charge in any accounting period will not exceed the Service Charge Cap attributable to that accounting period (duly apportioned where the accounting period is other than a full 12 months).

1. 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 Service Charge Cap 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.
1. The reason for using a date three months before the cap commencement date is to ensure that there has been sufficient time for the relevant index figure to be published and avoid delays in implementing the review of the service charge cap arising from the relevant figures being unavailable. [↑](#footnote-ref-1)
2. Consider whether it should be the month preceding the term commencement date. [↑](#footnote-ref-2)
3. This should match the figure used in the definition of “Base Figure”. [↑](#footnote-ref-3)