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**OPTION TO RENEW**

1. Drafting notes
2. Introduction
	1. This precedent contains a standalone clause that can be added to the model lease to give the Tenant an option to renew the lease at the end of the term. It should be altered to reflect any requirements that are specific to the property, parties and terms of the transaction.
	2. Part 2 of this precedent contains the clause to include in the draft of the lease that you are preparing.
3. Option to renew clause
4. OPTION TO RENEW
	1. Defined terms

This clause 1 uses the following definitions:

[**“Advance Notice”**

a notice by which the Tenant notifies the Landlord that it intends to exercise the Option;][[1]](#footnote-2)

[**“Advance Notice Period”**

the period starting on the date two months before the start of the Option Notice Period and ending on the date two months before the end of the Option Notice Period;][[2]](#footnote-3)

**“New Lease”**

a lease of the Premises:

1. for a term of [NUMBER] years starting on the day following the last day of the Term;
2. reserving a Main Rent equal to the amount of the Main Rent reserved under this Lease on the last day of the Term;
3. containing rent reviews on [the first day of the term of the New Lease and] on the [fifth[[3]](#footnote-4)][fifth and tenth] anniversary[y][ies] of the first day of the term of the New Lease;
4. omitting the option to renew in this **clause 1**;[[4]](#footnote-5)
5. guaranteed by any person who, on the last day of the Term, is a guarantor of the Tenant under this Lease (not being a guarantor under an authorised guarantee agreement); [and]
6. [if the Landlord has served a Warning Notice under **clause 1.2.2**, including an agreement to exclude the provisions of sections 24 to 28 of the 1954 Act in relation to the tenancy created by the New Lease in accordance with the requirements of Schedule 2 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003; and][[5]](#footnote-6)
7. otherwise on the same terms as this Lease.[[6]](#footnote-7)

**“Option”**

the option to renew in clause 1.3;

**“Option Notice”**

a notice by which the Tenant notifies the Landlord that it is exercising the Option;

**“Option Notice Period”**

the period of [six] months starting on the date [12] months before the last day of the Term[;][.]

[**“Statutory Declaration”**

a statutory declaration made by the Tenant in accordance with paragraph 4 of Schedule 2 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003; and][[7]](#footnote-8)

[**“Warning Notice”**

a notice in relation to the tenancy to be granted by the New Lease given in accordance with section 38A(3)(a) of the 1954 Act.][[8]](#footnote-9)

* 1. [Precondition to the exercise of the option[[9]](#footnote-10)
		1. The Tenant must not exercise the Option unless and until it has given the Landlord an Advance Notice during the Advance Notice Period. Giving an Advance Notice will not oblige the Tenant to exercise the Option.
		2. If the Tenant gives the Landlord an Advance Notice, the Landlord may serve a Warning Notice on the Tenant within the period of [one] month starting on the date on which it received the Advance Notice. If the Landlord does so, the Tenant must not exercise the Option unless and until it has given the Landlord a Statutory Declaration.]
	2. Option to renew

[Subject to the provisions of clause 1.2, the][The] Tenant may renew this Lease by giving the Landlord an Option Notice during the Option Notice Period.

* 1. Grant of the new lease

If the Tenant exercises the Option:

* + 1. [if, at the date of completion of the New Lease, the Main Rent due under this Lease has been paid in full,] the Landlord must [at the cost of the Tenant] grant and the Tenant must accept the grant of a New Lease as soon as reasonably practicable after the Tenant has exercised the Option; and
		2. as soon as reasonably practicable after the Tenant has served the Option Notice, the Landlord must prepare the draft of the New Lease and submit it to the Tenant. The Landlord and the Tenant must then take reasonable steps to agree the terms of the New Lease. The Landlord must provide an engrossment of the New Lease to the Tenant once those terms have been agreed.
	1. Resolution of disputes

If the Landlord and the Tenant cannot agree the terms of the New Lease, either the Landlord or the Tenant may require the terms of the New Lease to be decided by an independent arbitrator who must be a solicitor having at least ten years’ experience in drafting leases of premises similar to the Premises. If the Landlord and the Tenant cannot agree on the identity of the arbitrator, the arbitrator will be appointed by the President of the Law Society on the application of either the Landlord or the Tenant. The arbitration must be conducted in accordance with the Arbitration Act 1996.

* 1. Time of the essence

Time is of the essence in respect of the obligations in [clause 1.2 and] clause 1.3.

1. Include this only if the new lease will be contracted out of the security of tenure provisions in the Landlord and Tenant Act 1954. See footnote 9. [↑](#footnote-ref-2)
2. Include this only if the new lease will be contracted out of the security of tenure provisions in the Landlord and Tenant Act 1954. See footnote 9. [↑](#footnote-ref-3)
3. Amend depending on the length of the new contractual term and the rent review frequency. [↑](#footnote-ref-4)
4. It is important that the option to renew is not incorporated into the new lease otherwise the lease becomes perpetually renewable and will take effect as a term of 2000 years (section 145 Law of Property Act 1922). [↑](#footnote-ref-5)
5. Include this only if the new lease will be contracted out of the security of tenure provisions in the Landlord and Tenant Act 1954. See footnote 9. [↑](#footnote-ref-6)
6. If it is agreed that there are to be further differences, set them out in additional sub-paragraphs here. [↑](#footnote-ref-7)
7. Include this only if the new lease will be contracted out of the security of tenure provisions in the Landlord and Tenant Act 1954. See footnote 9. [↑](#footnote-ref-8)
8. Include this only if the new lease will be contracted out of the security of tenure provisions in the Landlord and Tenant Act 1954. See footnote 9. [↑](#footnote-ref-9)
9. Include this precondition only where the renewal lease is to be contracted-out of the security of tenure provisions in sections 24 to 28 Landlord and Tenant Act 1954. The reason for including the precondition is that the exercise by the tenant of the option to renew will create an agreement for the grant of the renewal lease. If this lease is to be contracted out, the landlord must have served a warning notice and the tenant must have given a statutory or simple declaration before the option is exercised. The precondition requires the tenant to give advance notice of its intention to exercise the option to enable the contracting out procedures to be followed before the option is exercised. To protect the tenant where the landlord does not respond to the advance notice, the tenant can exercise the option to renew if the landlord has not served a warning notice within the required time. The result of this will be that the renewal lease will be within the security of tenure provisions in the 1954 Act.

If this pre-condition is not included, you can delete the definitions of “Advance Notice”, “Advance Notice Period”, “Statutory Declaration” and “Warning Notice” in clause ‎1.1 and the wording in sub-paragraph ‎(f) in the definition of “New Lease”. You should also delete the wording in square brackets in clause ‎1.6. [↑](#footnote-ref-10)