1. Version 1.3 of the Model Commercial Lease
2. Introduction

* The primary objective in version 1.3 of the MCL is to simplify the alterations clause (although we have taken the opportunity to make an number of other amendments at the same time). The extent of the alterations that the tenant is permitted to carry out has not been changed but we have reduced the number of definitions and restructured the alterations provisions to make it easier to read and understand the extent of the works that the tenant is permitted to carry out.
* A new page headed “MCL Changes – [MONTH] 2018” is now available on the Guidance section of the MCL website. On that page, as well as the text of this explanatory note, you will find a link to a PDF document that shows the changes (from version 1.2 to version 1.3) that have been made to the text of the lease for a shopping centre unit (MCL-RETAIL-07).

1. CHANGES TO THE LEASES
2. Clause 1: Changes to defined terms

* In a small number of cases, defined terms were used only once or twice in the lease. Where this is the case, we have deleted the defined term and included the full reference in the lease. The key defined terms that this affects are:
  + “1995 Act”;
  + “EPB Regulations”
  + “Schedule of Condition”; and
  + “Service Charge Exclusions”
* There is a new definition of “Accounting Period” for the operation of the service charge.
* Where we refer to plans, we have added an option in each case to refer to a specific plan number instead of generically to “the Plans”.
* The definition of “Aerials” has been deleted. This is now included in the definition of “Plant”.
* The definition of “Centre Contribution” now refers to the new definition of “Accounting Period”. The wording added to paragraph (a) of the definition is to add clarity to the costs to which the landlord will contribute.
* The definition of “Common Parts” has been amended to refer to the clause that gives the landlord the right to designate the extent of the common parts available for use by the tenants of the centre.
* The definition of “External Works” has been simplified. It cross-refers to the clause that permits the tenant to install “Plant” on the “Plant Area” and run conducting media from them to the “Premises”.
* We have deleted the definition of “Notice”. Under both versions 1.1 and 1.2 of the Lease, any notice given by the landlord or the tenant had to be served in accordance with the formal provisions in clause 6.4. This is too rigid for use in those cases where notice needs to be given quickly or can be given in a less formal way. In version 1.3, we distinguish between formal notices that must be served in accordance with clause 6.4 and other notices that can be given less formally, though still in writing.
* A small amendment to the definition of “Outgoings” makes it clear that the tenant is liable for the costs of outgoings in relation to any “Plant” that it has installed.
* The amendment to the definition of “Permitted Works” reflects the removal of the definition of “Tenant’s Business Alterations” (see below).
* The definition of “Plant” now refers specifically to the plant that the tenant can install rather than by cross-referring to the list of plant in the schedule that gives the tenant the right to install it. This makes the defined term clearer and makes it easier to amend the list of plant that the tenant has the right to install or to delete the right completely where it is not required.
* The definition of “Plant Area” has been reworded. There is one substantive change in the wording. There is now an option for the “Plant Area” to be defined as the area where two or more tenants will have the right to install plant rather than individual tenants being allocated specific areas.
* The change to the order of the wording in the definition of “Rent Commencement Date” reflects a small change made to a number of defined terms. Any qualifications to definitions now appear at the end rather than at the start of the definition. Similar changes have been made to the definitions of:
  + “Common Parts”; and
  + “Service Charge”.
* The definition of “Service Costs” has been simplified and refers to the new definition of “Accounting Period”. We have removed the slightly inelegant concept of “excluding” a “Service Charge Exclusion”. A new paragraph 5 in Part 1 of Schedule 3 (Service Charge) ensures that the relevant costs are not included in the “Service Costs” in the first place.
* We have removed the definition of “Tenant’s Business Alterations”. Each part of the definition has been dealt with in other parts of the lease as follows:
  + a new paragraph in Schedule 6 (Works) includes an obligation on the tenant to ensure that its works do not affect the structural integrity of the “Centre”;
  + the right to install a shop-front is now granted in clause 4.11 (Alterations);
  + the optional right to create openings in walls, ceilings and floor slabs is now granted in clause 4.11 (Alterations); and
  + the right to affix to the structure is now granted in clause 4.11 (Alterations).
* As the definition of “Service Charge” already refers to the landlord’s right to make adjustments, we have deleted the reference to that right in the definition of “Tenant’s Proportion”.
* We have added some additional wording to the definition of “Term” in an attempt to make it fail-safe in the event that the parties include the wording to exclude the security of tenure provisions in the Landlord and Tenant Act 1954 but forget to delete the reference to the “Term” including any statutory continuation of it.

Clause 2: Changes to interpretation provisions

* As we have allowed for some notices to be served without complying with the formal notice provisions in clause 6.4, we have made corresponding changes to the interpretation provisions in clause 2 of the lease. Notices must be given in writing and, where formal notice has to be given, the requirements of clause 6.4 must be followed. A new clause 2.4 makes it clear that applications for consent (such as consent to assign or carry out works) must be made by formal notice. In addition, the following provisions in the lease require formal notice:
  + notice of an indemnity claim under clause 4.7.2;
  + notice served by the tenant in relation to the removal of “Permitted Works” at the end of the term under clause 4.13.3;
  + notice served by the landlord varying the location of the “Plant Area” under clause 5.10.4;
  + notice served by the landlord requesting that the tenant relocates “External Works” under clause 5.11.1;
  + notice given of a change in a party’s address for service under clause 6.4.1;
  + notice exercising a break clause under clause 8.1; and
  + notice terminating the lease following damage by an insured risk under paragraph 4.1 of Schedule 4.
* Clause 2.12 has been amended to ensure that the landlord is under an obligation to act reasonably when making any allocation under the lease. This affects primarily the allocation of common parts for use by the tenants and the allocation of plant area.

Clause 4.9: Changes to repair and decoration

* As the definition of “Tenant’s Business Alterations” has been removed, we now refer to “Permitted Alterations” instead. “Permitted Alterations” are all alterations that the tenant is permitted to carry out under the lease including alterations for which landlord’s consent is not required.

Clause 4.11: Alterations

* Clause 4.11.1 begins with a general prohibition on the tenant’s right to carry out any alterations unless it has an express right to do so.
* Clause 4.11.2 includes a right to carry out works to install, alter or remove the shop front with the landlord’s consent.
* Clause 4.11.3 includes an optional right to make openings in structural and non-structural walls, ceilings and floor slabs to install conducting media with the landlord’s consent.
* Clause 4.11.4 includes an optional right for the tenant to install “Plant” on the “Plant Area” and to connect to it.
* Clause 4.11.5 is a general right to install, alter and remove tenant’s fixtures and to carry out non-structural works to the Premises. A general right to affix to the structure is included as part of these works. Note that in the leases of offices, there is an option that requires consent for non-structural alterations save for the installation, alteration and removal of internal demountable partitioning.
* Clause 4.11.6 requires the tenant to comply with the works provisions in Schedule 6 when carrying out any works. Clause 4.11.7 allows the landlord to impose additional requirements to those contained in Schedule 6 where its consent is required to the works.
* Clause 4.11.8 is a deeming provision for use where the landlord (without being under any obligation to do so) permits works outside the premises. The wording removed from the beginning of this clause is now contained in clause 4.11.1.

Old Clause 4.12: Relocation of External Works

* We have moved this clause to a new clause 5.11 so that the provisions follow the related provisions allowing the landlord to vary the allocation of common parts, service risers and plant areas.

Clause 4.13: Obligations at the End Date

* We have included a specific obligation to remove “Electronic Communications Apparatus” and “Wireless Data Services”. These were previously dealt with as a separate item within the alterations clause and would therefore have previously fallen within the tenant’s obligations to reinstate “Permitted Works”.
* In clause 4.13.5, the landlord’s rights in relation to items left on the premises now refer to “disposal” rather than sale as some items left on the premises may have no commercial resale value.

Clause 4.14: User

* We have added a restriction on not using the premises for any illegal activity in clause 4.14.2. Although it should go without saying that property should not be used for illegal purposes, in light of various responses to Government consultations saying that every lease contains an express restriction on use for illegal purposes, we thought we should include it!
* A new right to install and use Electronic Communications Apparatus and Wireless Data Services has been included here rather than in the alterations clause. As previously mentioned, there is now an express obligation in clause 4.13 to remove these items at the end of the term.

Clause 4.19: To comply with Acts

* In clause 4.19.1 we have added “and must not breach”. This is in line with the amendment made to clause 4.14.2.
* In clause 4.19.2, we have added a reference to the use and occupation of the premises. There have been recent cases in the European Courts where landlords have been challenged for failing to prevent tenants from using the premises for the sale of counterfeit goods.

Clause 5.10: Designation of Common Parts and use of rights

* Although there is some minor rewording in this clause, this is to aid clarity rather than to change the effect of the clause. It now refers to the new clause 5.11 in relation to the relocation of external works.

Clause 5.11: Relocation of External Works

* This clause replaces the old clause 4.12. The wording in clause 5.11.2 has been simplified and there is a new obligation in clause 5.11.4 requiring the tenant itself to comply with its obligations. Otherwise, the effect of the wording remains the same.

Clause 6.1: Landlord’s rights to end this Lease

* We have made some minor changes to the wording in relation to the bankruptcy of a tenant who is an individual so that the making of an application by the tenant to be declared bankrupt is a ground for forfeiture. A corresponding change has been made to the asset management documents that include the wording in the guarantee clause.

Clause 6.2: No acquisition of easements or rights

* We have added a declaration in clause 6.2.4 that the tenant has no right to do anything that would result in the loss of rights enjoyed by the Premises or by the Centre.

Clause 6.3: Works to adjoining premises

* We have added wording to this clause to make it clear that the landlord is not bound by it where the works that the landlord will carry out will not have an impact on the premises.

Clause 6.10: Representations

* Where there is an agreement for lease, it is usual for the agreement to exclude the landlord’s liability for pre-contract representations and warranties other than those given in replies to pre-contract enquiries. If the parties proceed directly to the grant of a lease without an agreement for lease, this clause includes similar exclusions to those that would normally be included in the agreement for lease.

Clause 6.11: Statutory compensation

* This is a new optional clause that excludes the right of the tenant to statutory compensation if the landlord successfully opposes the renewal of the lease under the Landlord and Tenant Act 1954.

Clause 7.2.2: Guarantee

* The change in the wording is stylistic. There is no change in the meaning. Corresponding changes have been made to the management documents that include a guarantee.

Clause 8.1.1: Break clause

* We have added wording to make it clear that, where a pre-condition to the exercise of the break clause is that the tenant is up-to-date with the payment of the main rent, this includes the payment of any VAT on the main rent.

Schedule 1: Part 1 (Rights granted) – paragraph 5

* The wording of the tenant’s rights to install plant on the plant area has been simplified.

Schedule 1: Part 2 (Rights reserved) – paragraph 6

* We have deleted the word “or outside any buildings on” as the premises are an internal demise and therefore “buildings on the premises” does not make sense in the context of a letting of part.

1. Schedule 2 (Rent Review): Definition of “Hypothetical Lease”

* Whilst break clauses are excluded from the terms of the hypothetical lease, we have added wording to make it clear that the rights to terminate the lease following damage by an insured or uninsured risk are not excluded from the terms of the hypothetical lease.

1. Schedule 3 (Service Charge): Part 1 – paragraph 5

* New wording in paragraph 1.2 allows an Accounting Period to be shorter or longer than a year where there is a change in the date on which the Accounting Period ends.
* A new paragraph 5 deals with items that the landlord cannot include in the service charge.

1. Schedule 3 (Service Charge): Part 3

* We have made it clear that the costs in relation to lighting relate to the Common Parts in paragraph 3 but that heating, ventilating or air-conditioning can apply either to the Common Parts or to the Centre in paragraph 4.
* We have added the right for the landlord to recover the costs of providing guest Wi-Fi services in paragraph 15.

1. Schedule 4 (Insurance):

* In paragraph 2.4, we have added an obligation on the landlord to reinstate as soon as reasonably practicable.
* We have rearranged some of the wording in paragraph 4 to make it easier to follow. The effect of the clause remains unchanged.

1. Schedule 6 (Works)

* We have added a new obligation on the tenant in paragraph 2.2 not to affect the structural integrity of the Centre when carrying out works.
* For management purposes, we have included a new paragraph 2.10 requiring the tenant to label plant and equipment installed outside the premises.
* Corresponding amendments have been made to the licences for alterations.

Schedule 8: (Underletting)

* Although the wording in the definition of “Approved Underlease” has changed, this is a re-ordering of the wording. It does not include substantive changes.
* In paragraph 2.1, the restriction on the number of underlettings is now defined by reference to the number of units of occupation that result from the underletting rather than the number of people permitted to occupy.

CHANGES TO THE LICENCES TO ASSIGN

* The guarantee provisions in the licences to assign have been updated to include the changes made to clauses 6.1 and 7.2.2 of the lease.

CHANGES TO THE LICENCES TO UNDERLET

* The guarantee provisions in the licences to under have been updated to include the changes made to clause 6.1 of the lease.

CHANGES TO THE LICENCES TO ALTER

* A definition of “Planning Acts” has been added to the licences to alter.
* The licences to alter have been updated to include the amendments made to Schedule 6 of the lease.

CHANGES TO INDEX-LINKED REVIEW CLAUSE

* We have updated the guidance notes and examples.
* An option for the annual calculation period to start on either the date of the lease or the term commencement date has been included.