

HEADS OF TERMS FOR AGREEMENT AND LEASE SUBJECT TO CONTRACT

[Note: The Heads of Terms must be read in conjunction with the Guidance Notes]

Landlord/Developer:

[*]

Tenant:

[]

Site:

[*] and for identification only edged red on the attached plan.

Building:

A building to be constructed, and at completion to [*comprise] [*include] a primary care centre or centres to be constructed in accordance with NHS Guidance (as referred to below) and [*] car parking spaces.

Area:

The intended size of the building is [*] square metres based on Gross Internal Area (GIA)

Demise:

[*The Site] [*The Building but excluding the remainder of the Site] [*The interior of the Building excluding structural parts] [*The basement/ground/first/second floor of the Building excluding common and structural parts].

(A) THE AGREEMENT FOR LEASE

An agreement will be entered into before the development commences whereby the Landlord undertakes to construct the Building and, once completed, for the Tenant to take the Lease. The agreement to include the following:

Plans and Specification

A definition of the construction works to be undertaken by reference to an attached package of plans and specifications. Plans and specifications to comply with NHS Guidance e.g. appropriate plans and adequate information on room data and also to indicate the intended size of the building. Any material variations as to design, specification size or layout to be agreed between the parties and the District Valuer prior to exchange of the Agreement.

Variations

Any post-Agreement variations of a non structural nature required by the Tenant [*or the Primary Care Trust (PCT)] of the plans/specifications to be subject to the approval of the Landlord. Approval shall not be unreasonably withheld provided that if the Landlord is to incur additional costs the Tenant has agreed to reimburse those costs (unless under the terms of relevant NHS Funding the District Valuer has also agreed that reimbursement via an appropriate rental adjustment).

Any post-Agreement variations required by the Landlord, with certain exceptions, to be subject to the approval of the Tenant [or PCT], and not to be unreasonably withheld in the case of variations which are not material. Those exceptions are where the variations are minor; where required by statute, other regulations or NHS Guidance; where they do not materially affect the demised area; or in cases where specified materials are not available (subject to using comparable alternatives). In such cases the tenant should be notified.

Tenant's Monitoring Surveyor

Any monitoring surveyor/project manager appointed by the Tenant or PCT to be given the opportunity of reviewing the plans and specifications prior to agreement. Between the Agreement and commencement on site, any variations, as detailed under the heading "Variations" to be reported to the monitoring surveyor. During the build programme the monitoring surveyor is to be given reasonable notice of all site meetings and have the right to accompany the architect/employer's agent on such meetings and in respect of practical completion, as noted below.

Practical Completion

The Tenant/PCT's monitoring surveyor and the DV will be notified of and be entitled to attend at the relevant inspection for the above and (if available on the date of the inspection) and may make due representations to the Architect/Employer's Representative prior to the issue of the statement or certificate. However, the Tenant/PCT or their monitoring surveyors shall not interfere with the discretion of the Architect/Employer's Representative in issuing the certificate or statement (nor delay or prevent the issue of the statement or certificate)

The Landlord to ensure that his building contract provides that Practical Completion will not be certified unless the Plans and Specification referred to above have been fully complied with particular regard to:

- as to acoustic seals
- as to clinical washbasins, cupboards and kitchen units to consulting and/or treatment rooms
- as to floor coverings in treatment rooms
- in respect of any arrangements in relation to patient privacy
- in respect of matters facilitating confidential communications with reception staff
- as to storage and disposal of clinical waste
- as to security for drugs, records, prescription pads and doctor's statements and to the proper operation of any surgery facility
- as to lighting, heating and ventilation

Warranties

The Developer to procure collateral warranties in favour of the Tenant from each of the Contractor, and key members of the professional team attached to the project. These should include the Architect and (if relevant) the Employer's Representative. Warranties should be in a reasonable and institutionally acceptable form allowing for at least two assignments without the consent of the warrantor (with further assignments only with such consent). Product guarantees or subcontractor warranties may be offered.

Defects

The Landlord to ensure that his Building Contract contains a 12 months defects liability period from the date of Practical Completion. The Tenant will co-operate in reporting defects arising as they become aware of them ahead of the end of the defects liability period. If the Building Contractor defaults, the Landlord will nonetheless ensure such defects are remedied.

Rent

The initial rent will be:

£[]*] per annum

subject to agreement between the Landlord and the Tenant after final measurement.

The initial rent assumes a NIA (measured in accordance with RICS Code of Measuring Practice and RICS Guidance Note on Medical Centre and Surgery Premises of [*] square metres and at a rate of £[*] per square metre and [*] parking spaces at a rate of £___per car parking space}. Should the size of the Building or parking spaces exceed this assumption, to avoid doubt the initial rental will not be increased without the agreement of the tenant but may be reduced pro rata if the floor area is lower.

Lease Completion

The Lease to the Tenant is to be completed [5][10] working days following practical completion being certified or stated by the Landlord's Architect or Employer's Representative under his Building Contract ("Practical Completion"). The Heads of Terms for the Lease are noted below.

Rent Commencement Date and Access

The rent commencement date under the Lease will be the date of Lease Completion, or the date on which the Tenant is allowed into occupation if earlier (other than for the purposes of agreed fitting out). If access is provided prior to completion of the Lease, then from the date of that access, the Tenant [*will be responsible for any damage or injury arising from such access] and will be obliged under their covenants and other provisions as set forth in the Lease

Other Provisions:

- VAT to be charged on rent subject to the Landlord providing copies of its election to waive exemption to charge VAT together with an HM Customs & Excise acknowledgement.
- The Agreement to be personal to the Tenant and they may only assign the benefit with the consent of the Landlord except where the assignment is to (a) other NHS Doctors provided that the number of assignees may never fall below [two] individuals (and the level of rent reimbursement under the relevant NHS Funding is not prejudiced) or (b) a PCT or other NHS body with the benefit of the NHS (Residual Liabilities) Act 1996. Where either exception applies, it will be a condition precedent of assignment that written notice plus a direct covenant (in reasonable form) is given to the Landlord by the assignee.
- The development obligations within the Agreement are personal to the Landlord subject to a right of step in or enforcement by funders, and otherwise subject to the tenant (acting reasonably and without undue delay) not objecting to the transfer of obligations

- The Agreement to contain a long stop date of [] months to procure practical completion, (normally sufficient to allow two full build periods, and to provide for extension for reasons beyond the Landlord's control).
- The Tenant will have rights to determine the Agreement (due to the Landlord's material breach of obligations or insolvency) subject to the funders of the Landlord's step in rights to build out the project.
- The Agreement for Lease will provide that in the event of a dispute, mediation provisions are available. The Agreement will, in addition, provide for either resolution by arbitration or by an expert determination should mediation not prove successful.

COSTS

Each party will be responsible for their own legal costs of the Agreement and Lease.

(B) LEASE

Except as specifically provided below, the Lease will be in the form of an institutionally acceptable Lease with the usual covenants and provisions. Principal Lease terms as follows:

Term

[15] [20] [25] years commencing from Practical Completion.

Rent

The initial rent established under the Agreement (see above) or otherwise as agreed between the Landlord and the tenant.

Rent Reviews [delete bullet points as appropriate]

- Rent Reviews every [3][5] years.
- Rent at review to be determined by the increase in the [RPI] [similar Index] or [fixed rate]
- Rent at review to be determined by Market Rent [upwards only] [upwards or downwards, but never below the initial rent] [either party to implement] [landlord only to initiate]
- In the assessment of Market Rental Value, the standard commercial assumptions and disregards are to be taken in to account, and the assumed term of the hypothetical lease is to be 15 years and the NIA is deemed to be a maximum of [-----].
- Where the parties fail to agree the Open Market Rent, it will be determined by an Independent Expert appointed by the President of the RICS. The Independent Expert is to be a Chartered Valuation Surveyor experienced in the valuation of medical premises and having full knowledge to reimbursement of rents to GPs. [The review provisions will entitle the Independent Expert (on a request from either the Landlord or the Tenant) to contact and seek representations from the District Valuer].

- The rent review clause is to contain a proviso that where the Tenants are GPs receiving NHS Funding by means of rent reimbursement under the Directions (see Guidance Notes) and whilst there is an independent appeals system in place through the NHS Litigation Authority the level of lease rent will not exceed the amount assessed at the date of the review by the District Valuer as the amount to be reimbursed under the Directions adjusted to the terms of the lease. If the Landlord so requires, the Tenant shall be obliged to invoke NHS appeal procedures to review such assessment.
- [The rent review clause is to provide a clause allowing the Landlord to collect interest at base rate in respect of arrears of rent following the conclusion of a rent review] [The rent review clause is to contain a declaration requiring both parties to use all reasonable endeavours to comply with the procedure and timetable forming part of the rent review clause].

Maintenance and decoration

1) FULL REPAIRING AND INSURING MODEL (FRI)

- (FRI without service charge) Tenant internal and external repairing and decoration covenant with the tenant also bearing responsibility of the insurance cost.
- FRI (with service charge) Tenant internal repairing and decorating liability. Landlord structural repair, external decoration and repair and insuring liability, the cost of which is recovered by the service charge.

2) TENANT INTERNAL ONLY REPAIRING MODEL (TIR)

- Tenant internal repair and decorating liability. Landlord structural repair, external decoration and repair and insuring liability where the cost of such is not recoverable by a service charge.

3) SERVICE CHARGES

Service Charge (if applicable);

- The service charge provisions of the lease are to be construed and interpreted in line with the recommendations of the RICS Code of Practice.
- The landlord will use all reasonable endeavours to ensure transparency in respect of the procurement and provision of services; service charge procedures and budgeting / accounting.
- The Landlord will have all due regard to the reasonable representations of the tenant in respect of the services; service charge procedures and budgeting / accounting.
- Service Charge to include cost of structural repair, external repair and decoration to include hard landscaping.
- Service Charge to include cost of structural repair, external repair and decoration to include hard and soft landscaping (See Note....)
- Separate Service Charge to include cost of repair, decoration and cleaning to internal common areas [and soft landscaping]
- Separate Service Charge to include internal Facility Management costs

Insurance

The Landlord to be responsible for insuring the property for full reinstatement costs (including costs of demolition/site clearance and all professional fees) and may include up to [3] years' loss of rent. The Landlord to apply insurance proceeds towards reinstatement and to provide the Tenant with a copy of the insurance certificate. Tenant to have an option to terminate the Lease without penalty if not reinstated within a specified period.

Alterations

Internal Alteration

The Tenant may make non-structural alterations without consent but with prior written notice to the Landlord

External/Structural Alterations

If the Tenant requires external or other structural alterations to be made it shall first propose the same to the Landlord. The Landlord will confirm whether it is prepared to undertake those alterations and on what terms. If those terms are reasonably acceptable to the Tenant then the Tenant shall not be entitled itself to undertake those alterations. If the Landlord is not willing to undertake the alterations, or offers to do so on terms which are not reasonably acceptable, the Tenant shall be entitled to undertake the same provided that:

- (a) all necessary consents from competent authorities have been obtained;
- (b) warranties are provided to the Landlord;
- (c) no adverse effect on the relevant NHS Funding;
- (d) no adverse effect on the value of the Landlord's reversion or the letting value of the demise;
- (e) Landlord's approval of the plans;
- (f) Tenant's covenant to reinstate the premises at the end of the term
- (g) such other reasonable requirements of the Landlord are complied with.

The Landlord shall not be considered as acting unreasonably in proposing terms for undertaking alterations which are subject to agreement with the tenant of an appropriate increase in the passing rental, and any of paragraphs (a) to (g) above.

User Clause

As a Surgery, Clinic or Primary Health Care Centre for the provision of Medical Services under the NHS, other ancillary Primary, Community Health and Social Care purposes and any other primary and community healthcare purpose within the meaning of Use Class D1 of the Schedule to the Town & Country Planning (Use Classes) Order 1987 as originally enacted or such other use providing it does not prejudice NHS Funding. [or other use with landlord consent such consent not to be unreasonably withheld (consent can be withheld if such change of use affects the landlord's reversion)].

Assignment

Assignment by the Tenants will require Landlord's consent except where [the demise] [substantially all of the demise] is reimbursed under the relevant NHS Funding and is an assignment to either or both of:

- (a) new or successor partners of the Tenant provided that the number of assignees may never fall below 2 individuals and the relevant NHS Funding is not adversely affected; or
- (b) Primary Care Trust or other NHS body with the benefit of NHS (Residual Liabilities) Act 1996

Where consent is not required it will be a condition precedent of assignment that written notice plus a direct covenant (in reasonable form) is given to the Landlord by the assignee. An AGA will not be required in such circumstances.

Where consent is required, this shall be subject to usual conditions and circumstances to protect the strength of the Tenant covenant and (where applicable) the level of the relevant NHS Funding. Where consent is required, there will be a requirement for an AGA.

Sub-Letting and Sharing

Sub-lettings subject to the consent of the Landlord not to be unreasonably withheld and provided that:

- (a) the security of tenure provisions of Part 2 of the Landlord and Tenant Act 1954 (and any successor legislation) are excluded;
- (b) there are no more than [] sub-lettings [each comprising no less/no more than [] square metres];
- (c) the Landlord has given approval (not to be unreasonably withheld) to the form of underlease;

The Tenant may share occupation provided that no relationship of landlord and tenant is created. [Sharing should be limited to no more than []] parties other than the Tenant