

NEW MEDICAL CENTRE DEVELOPMENT

HEADS OF TERMS FOR AN AGREEMENT TO LEASE

GUIDANCE FOR GP TENANTS

Introduction

This Guidance has been prepared by the Primary Care Premises Forum (PCPF) [following liaison with NHS England, District Valuer Services (DVS) and the BMA]. It is intended to give initial help to guide GPs through the process of a new medical centre development where the GPs will be the tenants. However, it is not a substitute [for any official NHSE&I or BMA guidance or] for any proper professional advice, and neither the PCPF nor any of the bodies listed above accept any liability.

This Guidance relates to the preparation and agreement of the Agreement to Lease, a key document that alongside attached plans and outline specification will;

1. Form part of the GP's Business Plan to be presented to the NHS Funder in order to obtain approval.
2. Be provided to DVS for the VFM Report.
3. Form the instruction to the solicitor for the preparation of the Agreement to Lease and Lease.

References/Definitions

Act: the Landlord & Tenant Act 1954 (Part II);

CMR: the current market rent assessed by DVS on behalf of the NHS to be reimbursed to you following the start of the lease or date of the Rent Review and which will include an allowance for external repairs, buildings insurance and external redecoration;¹

DVS: District Valuer Services appointed by your NHS Funder to determine the CMR and to undertake the VFM Report;

FRI Lease: a full repairing and insuring lease (where the tenant is responsible for the cost of all repairs and maintenance and for the cost of insuring the building);²

¹ The sum reimbursed is the lower of CMR or the actual Lease Rent (adjusted to TIR terms) and is limited to those parts of the Premises accepted by the NHS Funder as qualifying for inclusion in the CMR assessment.

² Depending upon the terms of your Lease, you will either be liable to undertake the repairs yourselves or alternatively you will be required to meet the Landlord's cost of doing so through the payment of a service charge.

Heads of Terms: the key terms to be included within the proposed Agreement to Lease and Lease;

IRI Lease: an internal repairing and insuring lease (where the tenant is responsible for only internal repairs and maintenance and for the cost of the building insurance);

Lease Rent: the rent payable under the terms of your Lease

NHS Funder: the NHS body responsible for the payment of the CMR (which may include NHSE&I or your ICB as the Commissioner of primary care services);

NIA: Net Internal Area

PCD/Directions: NHS (GMS - Premises Cost) Directions 2004, 2013³;

PCN: Primary Care Network

Rent Review: the date specified for the review of the Lease Rent in your Lease;

Solicitor: a specialist solicitor appointed by you who should have good experience in dealing with NHS Healthcare property and who should: (i) comment on the draft Heads of Terms; (ii) negotiate the terms of your Agreement to Lease and Lease; and (iii) advise you generally throughout the process;

TIR Lease: an internal repairing only lease (where the tenant is responsible for only internal repairs and maintenance, and not for the cost of external repairs and buildings insurance);

Valuer: a specialist Chartered Surveyor appointed by you who should have good experience in dealing with NHS Healthcare property and who should: (i) negotiate the proposed Lease Rent on your behalf with your Landlord/its Valuer; (ii) liaise with DVS regarding the CMR; (iii) negotiate the Heads of Terms for the Agreement to Lease; and (iv) advise you generally throughout the process.

VFM Report: a report under the Directions by DVS to confirm that the new Medical Centre project is value for money to the NHS.

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³ This Guidance is based upon the PCD currently available. A further revision of the PCD is anticipated which may impact upon some parts of this Guidance. Your specialist Solicitor and Valuer should be able to advise you on this.

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A. CONDITIONS OF USE

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The user will not make any substantive change to the text of the Heads without noting to a recipient that there have been changes, and either providing to the recipient the original PCPF form for comparison purposes or directing the recipient to the PCPF link for this.

The Guidance Notes and example Heads of Terms may be used in connection with establishing agreement on the provision of medical centres, but otherwise the user will not sell or publish for reward or obtain any further commercial gain out of this document, whether in whole or in part, or any document which incorporates it, whether in whole or in part.

B. THE AGREEMENT

a. NHS FUNDING

References in this document to the “**Directions**” are to the National Health Service (General Medical Services - Premises Costs) (England) Directions 2013 or to

comparable replacement regulations and to “**NHS Funding**” is either to funding pursuant to the Directions or in the case of PMS practices to comparable funding under the practice’s local contract.

b. NHS GUIDANCE

References in this document to “**NHS Guidance**” are to current NHS guidance for planning new Primary and Social Care Premises which is set out in the Department of Health’s (DH) Design Guidance (“The Design Guidance”) - See <https://www.gov.uk/government/organisations/department-of-health/series/health-building-notes-core-elements>. Within this web site is a link to Health Technical Memoranda.

The Valuation Office Agency Questionnaire for Primary Care Estate improvements and new developments is available on the website

<https://www.gov.uk/government/publications/voa-questionnaire-for-primary-care-estate-improvements-and-new-developments>.

It is not a project specification but as its purpose is to capture information about the developer’s team and proposals regarding the specification it should also therefore form part of the Agreement for Lease.

c. TENANT

This may be a corporate entity, individual GP, or NHS Property Services where the NHS has decided to take a Lease direct of a building or part of a building. In the case of a corporate entity, it is usual that guarantors will be required. In the case of individuals, and often these are GPs, typically four in number (under the current legal position) might be added as a Tenant. Beyond that, it may be appropriate to consider guarantees from other GP partners.

d. AREA

GIA is to be calculated (and the Agreement for Lease should so provide) in accordance with the RICS Code of Measuring Practice Sixth Edition. If Net Internal Area (NIA) has relevance for any purpose under the Heads, the current standard for calculating this is Valuation Guidance Note on Medical Centre and Surgery Premises.

e. DEMISE

This section of the Heads will specify one of a number of scenarios. For example, the Heads could be for the provision of the entire premises (the Site or the Building but excluding the remainder of the Site). Alternatively, where there is to be a letting in conjunction with other users the Demise may specify the interior of the Building excluding structural parts or the basement/ground/first/second floor of the Building excluding common and structural parts.

On internal repairing (TIR) leases the demise will usually refer to the internal shell of the property excluding any structural parts.

f. PLANS AND SPECIFICATION

The Agreement must include a definition of the construction works to be undertaken by reference to an attached package of plans and specifications. Plans and specifications should 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, the NHS Funder, and the DVS Valuer prior to exchange of the Agreement.

It is sometimes the case that the final package of plans and specifications is not settled at the point of Agreement for Lease. In that circumstance, a process for design development would be usual in the Agreement for Lease, and by reference to a general statement of intent. This often occurs in the case of Room Data Sheet (RDS) where general principles are agreed, but design development thereafter is provided for subject to qualified rights of approval between Landlord and Tenant.

g. VARIATION

Agreements for Lease will usually allow Landlords to decline approval (in their absolute discretion) for alteration requests which affect the building structure or the value of the underlying investment. In considering a request for alterations, Landlords/Developers will have regard to various value related facts including delays which might arise as a consequence of implementing change. Tenants should also be aware that aside from the impact that variations may have on rent, delays may have a practical effect on their timing to move from existing to new premises and they should liaise closely with the NHS Funder (where rental is reimbursed pursuant to the Directions) on the impact of that.

Once notified by the Landlord/ Developer of any intended variations, Tenants should in turn notify the NHS Funder, so that the reimbursing authority may liaise with DVS on the financial effect of the changes.

Any post-Agreement variations of a non-structural nature required by the Tenant or the NHS Funder of the plans/specifications will be subject to the approval of the Landlord. The Agreement should specify that such 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 DVS have also agreed that reimbursement via an appropriate rental adjustment). If the variation results in a cost saving the saving should be passed on to the tenant by way of an appropriate downward adjustment to the rent.

Any post-Agreement variations required by the Landlord, with certain exceptions, should be subject to the approval of the Tenant or NHS Funder, 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.

Any post agreement variations to be notified to DVS to establish whether the Current Market Rent for GP Reimbursement (CMR) is affected. The parties will also wish to consider whether the actual rent is affected by such variations

h. PRACTICAL COMPLETION

The Agreement should ensure that the Tenant's and the NHS Funder's monitoring surveyor and DVS will be notified of and be entitled to attend at the relevant inspection for the Certificate or Statement of Practical Completion and (if available on the date of the inspection) be able to make due representations to the Architect/Employer's Representative prior to the issue of the statement or certificate. However, it is usual to specify that the monitoring surveyor 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/Developer should take appropriate advice on how to ensure that its employer's agent or other monitoring surveyor is capable of insisting that the appointed building contractor fulfil the specific requirements noted here prior to issuing a Certificate or Statement of Practical Completion. Specific advice must be taken, but it may be by way of a suitable inclusion in the Landlord's/Developer's employer's requirement document.

On the issuing of the Certificate or Statement of Practical Completion there will be minor outstanding elements that the developer can attend to after occupation. The list of these elements is known as the Snagging List. However, there are elements essential for the use of the premises for healthcare purposes and where non-satisfactory completion would prevent occupation (i.e. they are not suitable for inclusion with any minor snagging list). For example, this could include;

- acoustic seals
- clinical washbasins, cupboards and kitchen units to consulting and/or treatment rooms
- floor coverings throughout all medical areas of the Building.
- any arrangements in relation to patient privacy
- matters facilitating confidential communications with reception staff
- storage and disposal of clinical waste

- security for drugs, records, prescription pads and doctor's statements and to the proper operation of any surgery facility
- lighting, heating and ventilation

Landlords/Developers and often Tenants may wish to negotiate this in more detail dependent on the circumstances and that discussion is likely to involve DVS. The consequence of that negotiation may be to either increase or decrease the list and/or change particular items.

It is recommend that the Tenants appoint a suitably experienced Chartered Surveyor to act as Tenant Monitoring Surveyor who can oversee the process.

WARRANTIES & DEFECT LIABILITY

The exact warranty package- which may include product guarantees and/or sub-contractor warranties for example in the case of lift and major plant - will need specific negotiation on a case-by-case basis. This section of the Heads of Terms needs to make clear the agreement reached in relation to that package.

The usual requirements are for 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.

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

i. RENT & RENT COMMENCEMENT DATE

The Agreement for Lease will generally contain arrangements for the agreement of the NIA at practical completion and the way in which the rental will reduce if the floor area or car parking spaces delivered is less than the original specified area and/or spaces. Should the size of the Building or parking spaces exceed the original specified the initial rental will not be increased without the agreement of the tenant and NHS Funder. The Agreement may also contain arrangements for adjustment in the case of Tenant requested variations and, in exceptional cases only, may prescribe a review of rent immediately prior to the grant of the Lease. However, such a review, termed a day one review, should be expressly agreed with the NHS Funder, and would be uncommon save for agreements where there is projected to be a very long period between exchange and delivery of the completed building.

To allow for the above the Agreement should specify that DVS will be given reasonable notice of each stage of the project where the Landlord will be undertaking check measurements to verify that the Target NIA will be achieved. The Agreement may also allow for DVS to be invited to attend and be given an opportunity to make reasonable representations to the Landlord. The final measurement will be undertaken by DVS, once the works are sufficiently complete to enable such a measurement to be undertaken

As good practice, Tenants should inspect prior to the projected date of Practical Completion and be informed through this of the practicalities of ensuring they can start business immediately on taking up occupation.

The Agreement would normally state that 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, it would be usual for the Tenant to be responsible for any damage or injury arising from such access.

j. OTHER PROVISIONS

- **VAT**

On new developments it is usual for the Landlord/Developer to charge VAT (subject to the Landlord providing copies of its option to tax the VAT together with an HM Customs & Excise acknowledgement). Tenants should ensure that this is agreed by the NHS Funder. There may be special circumstances when the parties may agree VAT is either not chargeable or is to be absorbed by the Landlord/Developer.

- **Agreement personal to the Tenant**

The Agreement for Lease will usually provide that the Lease is to go to named Tenants, or only those successors who have been approved by the Landlord/Developer under the terms of the Agreement for Lease. Such approval would normally include (a) other NHS Doctors provided that the number of assignees may never fall below a specified number, typically between two and four individuals (and the level of rent reimbursement under the relevant NHS Funding is not prejudiced) or (b) NHS Property Services or other NHS body.

- **Agreement personal to the Landlord**

As it will be the Tenant, and not the reimbursing authority, who are in contract with the Landlord/Developer, it is the Tenants' consent which is required for an assignment of the Landlord's interest. However, before providing consent the Tenant should consult with their NHS Funder and as appropriate seek their approval in turn to giving an assignment approval to the Developer/Landlord. The Landlord will however normally have to reserve a right of step in or enforcement by funders.

The Tenant should 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.

- **A long-stop date for termination**

The Landlord/Developer together with their funders will be making significant financial commitments in delivery of the building. They will secure insurance to cover burn downs and similar, but it is usual that such insurance provides only the costs of reinstatement and not of a return of funds (and profit) to the Landlord and its funders should the deal terminate. So, it is usual for a long-stop period to take account of this by acknowledging that there could be more than one insurable event on the life of the development. As with all other provisions, there may be specific negotiations on this point.

C. THE LEASE

Except as specifically provided below, the Lease will be in the form of an institutionally acceptable Lease with the usual covenants and provisions. Where any party is not represented, they must be advised of the RICS Code of Practice and also advised that they should take advice from a surveyor. An **Example of Heads of Terms** for a Lease is contained within the appendix but it is neither for general use nor a substitute for Heads of Terms properly negotiated between your surveyor and the Landlord/Developer.

a. TERM

Heads of Terms will normally establish the period of the lease between 15 to 30 years but the party should be aware that alterations to the term can vary the rent. The majority of leases on Primary Care Premises are for 20 - 25 years and increasing the term to 30 years would tend to reduce the rent whereas decreasing the term to 15 years would tend to increase the rent. Leases may be granted with security of tenure (within the 1954 Act) or such protection can be expressly excluded. Leases in this sector are usually within the 1954 Act and if they are to be outside, that requirement needs to be specifically stated in the Heads of Terms.

Break Clauses are not normally provided in leases on new purpose-built medical centres as to do so could question viability. This is as the cost of specialist premises, unlike general commercial premises need to be funded up to the date of the potential break which could increase the level of rent required way beyond the market or affordable level. The exception are those breaks contained within an "Armageddon Clause" which only come into effect where the NHS stop any form of rent reimbursement on GP leases and where there is no suitable substitute. The main purpose of a break clause in surgery premises is where those premises are old and likely to become unsuitable and thus fall outside of the NHS estates strategy.

b. RENT REVIEWS

Alternate style rent review clauses are available for Medical Centres and the agreed format will be detailed in the Heads of Terms. It should be noted that the different clauses will have a material effect on the level of the initial rent. Dependent upon market conditions, a fixed or index linked rent will tend to reduce the initial rent whereas clauses that allow a reduction at review will tend to increase the initial rent.

Commercial leases will generally include a provision whereby reviews run from a set date even though the review process may not be completed until sometime later (and may also not be commenced straight away after that date). Any increase in rent is paid from the earlier date and also commercial leases usually include a clause whereby interest on outstanding amounts becomes payable once the review is concluded.

Such clauses are often included within Medical Centre lease's as well but it is important the parties agree their position through the negotiations. As an example, it may not be the case that the NHS Funder will reimburse GPs for interest on outstanding rents from the original review date up to the date when the review is completed and the arrears paid. Whilst removing the interest clause would benefit the Tenant in this case, it would also prejudice the Landlord's investment value. If as part of the negotiations it is agreed the interest clause is removed or restricted, it is often replaced with a declaration in the Lease that in respect of the review procedure the parties must use all reasonable endeavours to complete the rent review procedures and timetables as specified in the Lease.

The parties to the Lease may also need to discuss protections for the Tenant where a notice served by the Landlord to commence the review is not served for an extended period after the date of that review. In general, the Tenant will be concerned to ensure that they are not unreasonably prejudiced by such late service.

GP Tenants normally require a proviso that where the Tenants are GPs receiving NHS Funding by means of rent reimbursement under the Directions and whilst there is an independent appeals system in place through NHS Resolution the level of lease rent will not exceed the amount assessed at the date of the review by DVS 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. In order to comply with the Directions it would be usual for the Tenant to agree that prior to any referral to the NHS Funder on the matter of the Market Rental Value the Tenant shall use all reasonable endeavors to ensure that the reasonable and proper requirements and procedures of the NHS Funder are properly followed including the requirement that the rental negotiations with the Landlord are completed in line with RICS best practice with the Tenant properly represented by independent surveyors.

c. MAINTENANCE DECORATION AND INSURANCE

Introduction

The CMR set out in the report by DVS is based on the assumption of a TIR lease where the rent includes a repair/insurance uplift typically set at 5% of the FRI rent but may increase or decrease with the repairing and insuring nature of the buildings. The repair/insurance uplift will normally include hard landscaping. There may be occasions where the Landlord is to take on the responsibility of soft landscaping and thus a further adjustment will be needed.

There are two main forms of Lease repairing covenant;

1 Tenant Full Repair (FRI) with or without a Service Charge:

- (i) ***Without Service Charge*** - The tenant is responsible for the repair, maintenance, decoration and replacement of all buildings, plant and machinery within the demised premises (which includes car parks, landscaping and boundary fences). The landlord is responsible for maintaining in place an insurance policy for the full replacement value, 3 years loss of rent (and where available on reasonable terms terrorism cover) and he can recover the annual premiums and the other costs (typically a triennial revaluation) of insurance from the tenant;
OR
- (ii) ***With Service Charge*** - The landlord, or more usually his appointed agent, manages the repair, maintenance, external decoration and replacement of all buildings, plant and machinery within the demised premises and insurance (which includes car parks, landscaping and boundary fences). The landlord is responsible for maintaining in place an insurance policy for the full replacement value, 3 years loss of rent (and where available on reasonable terms terrorism cover) and recovers the costs of so doing, including a managing agents fee, from the tenant via an annual service charge (usually payable as rent quarterly in advance). The tenant retains direct responsibility for internal decoration and the repair and insurance of his fittings and equipment. The external decorating, repair and insurance obligations of the Tenant should be covered by the repair/insurance uplift.

2 Tenants Internal Repairing (TIR)

The tenant is responsible for the repair, maintenance and decoration of the interior of the premises, doors/windows (internal surface, glazing and cleaning), plant and machinery and external soft landscaping. The landlord retains responsibility for the structure of the building (foundations, walls and

roof), external repair and decoration, replacement of plant and machinery and external hard landscaping, including boundary fences.

The division of responsibilities is principally achieved through the definitions of the tenant demise (see (B) Agreement – e Demise), with the tenant accepting responsibility for the repair and maintenance of all items therein. The landlord will require covenants relating to the frequency of maintenance plant and machinery. The tenant retains direct responsibility for internal decoration and the repair and insurance of his fittings and equipment.

Buildings and Loss of Rent insurance cover (on reasonable terms) is maintained by the landlord and the costs are not recoverable from the tenant. If there is an “excess” payment in relation to claims this will be payable by the claimant.

3 Hybrid Arrangements

There may be variations to the two main forms noted above. For example, for a multi-occupied building there will be common internal parts which may include, but are not limited to, entrance ways, corridors, waiting areas, toilets and conference rooms. These areas can be managed by;

- (i) A service charge arrangement managed by the landlord or his appointed agent; or
- (ii) One tenant taking responsibility and recovering proportionate shares of the costs from the other tenants.

Note: For both TIR and FRI leases the costs of managing these common areas are borne by the tenant.

4 Insurance

The Landlord will usually 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 will be required to apply insurance proceeds towards reinstatement and to provide the Tenant with a copy of the insurance certificate. Under the terms of an FRI or IRI Lease the landlord will then collect the cost of the insurance back from the Tenant via an “Insurance Rent” or if applicable via the Service Charge. Under the terms of a TIR Lease the landlord will not be able to reclaim the cost or insurance as the rent will have been calculated to include the cost.

Where the premises become unfit for use due to an insured risk, the Tenant will necessarily need to take up temporary accommodation. Therefore, the Tenant needs to make sure that they have arrangements in place to pay for that temporary accommodation. This may be effected via a Landlord's obligation (and the Landlord's insurance policy) but more usually cover is provided via the Tenant's business

interruption insurance. It is important that a Tenant takes specific advice from their insurance advisers in relation to insurance matters.

d. ALTERATIONS

1 Internal Alteration

A tenant may be required to obtain Landlord's written consent for non-structural alterations, but it should be specified that such consent should neither be unreasonably withheld or delayed. The Landlord may refuse consent if works will adversely affect the buildings EPC.

2 External/Structural Alterations

Commercial Leases do not normally allow Tenants to make external/structural alterations but often in Medical Centre Lease's if the Tenant requires external or other structural alterations to be made there will be a proviso that they 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.

e. USER CLAUSE

The Heads of Terms will normally specify that the premises will have a use restricted to 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 the old Use Class D1 of the Schedule to the Town & Country Planning (Use Classes) Order 1987 or such other use providing it does not prejudice NHS Funding. The Landlord and Tenant need to consider the inclusion, or not, of additional wording to expand the allowed use such as "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)". These will provide

some commitment on the part of the Landlord to agree changes away from the health specified user. The issue here is that this can affect a Landlord's funding of the development as prospectively at some point in the term it could lead to a less valuable user being agreed

f. ASSIGNMENT & SUB LETTING

1 Assignment

In standard commercial leases Assignment by the Tenants will require Landlord's consent. For Medical Centre Lease's an exception is usually made where the demise or 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 a specified number of individuals and the relevant NHS Funding is not adversely affected; or
- (b) NHS Property Services 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.

2 Sub-Letting and Sharing

Heads of Terms will normally specify that any Sub-lettings will be subject to the consent of the Landlord not to be unreasonably withheld 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 a specified number of sub-lettings each comprising no less/no more than an agreed size in square metres;
- (c) the Landlord has given approval (not to be unreasonably withheld) to the form of underlease;

It is usual for the Tenant to be able to share occupation provided that no relationship of landlord and tenant is created.

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D. EXAMPLE HEADS OF TERMS

The Heads of Terms for Lease below form an example document containing hypothetical terms to demonstrate a completed Heads of Terms for Lease. The specific terms within are not to be prescriptive and should be individually agreed between the parties and/or their representatives.

HEADS OF TERMS FOR LEASE SUBJECT TO CONTRACT

Date Agreed: 1st July 2023

The estimated CMR stated below is subject to NHS affordability and approval and is valid for 6 months from the date of the CMR notification letter.

Landlord/Developer:

Health Centre Investor/Developer Ltd.

Tenant:

Dr Primary, Dr Care, Dr Premises & Dr Forum

Site:

Surgery Street, Primary Avenue, HP0 6HX and for identification only edged red on the attached plan.

Building:

A building to be constructed and at completion to comprise a primary care centre to be built in accordance with NHS Guidance (as referred to below) and 60 car parking spaces.

Area:

The intended size of the Building is 3,000 square metres Gross Internal Area (**GIA**) and 2,700 square metres Net Internal Area (**NIA**). All measured in accordance with RICS Guidance Notes: The Valuation of Medical Centre and Surgery Premises (GN60/2010).

Demise:

The internal shell of the property excluding any structural parts.

Except as specifically provided below, the Lease will be in the form of an institutionally acceptable Lease with the usual covenants and provisions. The form of Lease agreed between the Landlord and Tenant will be attached to the Agreement for Lease.

Principal Lease terms as follows:

Landlord and Tenant Act 1954

The lease is to be included within the protection of the Landlord & Tenant Act 1954.

Term

25 years commencing from Practical Completion.

Rent

The initial rent established under the Agreement for Lease or otherwise as agreed between the Landlord and the Tenant exclusive of VAT.

Payment Terms

The rent will be payable quarterly in advance on 25th March, 24th June, 29th September and 25th December in each year with a proportionate amount following completion.

Demise

The demised NIA floor area is 2,700 square metres as agreed for Rent Reimbursement (CMR) before commencement of the development. If the actual NIA of the building is smaller, and this has been accepted by the Tenant, the actual area will be substituted for the demised area and will be used for initial rent and future rent reviews.

The demised car parking spaces are 50 as agreed for Rent Reimbursement (CMR) before commencement of the development. If the actual number of car spaces is lower, and this has been accepted by the Tenant and NHS Funder, the actual number will be substituted and will be used for initial rent and future rent reviews.

Rent Reviews

The Tenant covenants that prior to any referral to the NHS Funder on the matter of the Market Rental Value the Tenant shall use all reasonable endeavours to ensure that the reasonable and proper requirements and procedures of the NHS Funder are properly followed including the requirement that the rental negotiations with the Landlord are completed in line with RICS best practice with the Tenant properly represented by independent surveyors. Without limitation to the foregoing the Tenant shall provide the contact details of the independent surveyors instructed by the Tenant, an analysis of the valuation and the main comparable premises.

- Rent Reviews every 3 years.
- Rent at review to be determined by Market Rent upwards or downwards, but never below the initial rent with the landlord only to initiate.
- In the assessment of Market Rental Value, the standard commercial assumptions and disregards are to be taken into account, and the assumed term of the hypothetical lease is to be 15 years.
- 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 higher of 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 the Landlord and the Tenant to use all reasonable endeavours to comply with the procedure and timetable forming part of the rent review clause. In reflection of this interest will not be charged under the rent review provisions for the back increase in rent.

Maintenance and decoration

TENANT INTERNAL REPAIRING ONLY MODEL (TIR)

TIR (with service charge for internal common parts). The Tenant is responsible for the decoration and the repair of the internal shell plus maintenance of all plant. The Landlord is responsible for external and structural repair, external maintenance, external decoration and replacement of all buildings, plant, and machinery (which includes car parks, hard landscaping, and boundary fences).

SERVICE CHARGES;

- The Service Charge is to cover the cost of repairs and running costs related to the internal Common Parts only.
- 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 soft landscaping.

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, terrorism, and engineering insurance. 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. The Tenant should be insured for the cost of temporary accommodation during the rebuilding of the existing premises. The Tenant should arrange their own contents insurance and any other applicable insurance cover for the operation of the premises including business interruption insurance. The Landlord will not recover the cost of the insurance from the Tenant.

Energy Performance Certificate (EPC)

The Landlord will be responsible for obtaining and keeping an EPC for the Building and to provide the Tenant with a copy of the EPC certificate.

Alterations

Internal Alteration

The Tenant may make non-structural alterations with Landlord's consent which shall not be unreasonably withheld.

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 E of the Schedule to the Town & Country Planning (Use Classes)(Amendment) (England) Regulations 2020 (SI 2020 No. 757) or such other use providing it does not prejudice NHS Funding.

Assignment

Assignment by the Tenants will require Landlord's consent except where 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 3 individuals and the relevant NHS Funding is not adversely affected; or
- (b) NHS Property Services or other NHS body with the benefit of NHS (Residual Liabilities) Act 1996, or an NHS Foundation Trust.

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 where

it is reasonable for the Landlord to request one.

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 2 sub-lettings each comprising no less/no more than 270 square metres;
- c) the Landlord has given approval (not to be unreasonably withheld) to the form of underlease;
- d) The Tenant may share occupation provided that no relationship of landlord and tenant is created.

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GP Retirement

Where individual GPs are the tenant, any individual GP leaving the practice will be released by the landlord from the terms of the Lease provided that if this would cause the number of GPs remaining party to the lease to fall below 3, he or she is replaced by way of assignment to a GP or non-GP partner and provided that the rent reimbursement funding arrangements are not prejudiced.

NHS Funding/Reimbursement

The Tenant must do all things necessary to protect NHS Funding/reimbursement of the rent in respect of the Premises provided it does not affect the proper operation of the Practice in servicing their NHS contracts.

Costs

Each party will bear their own legal costs and disbursements in relation to the Lease, including Stamp Duty Land Tax and Land Registry Fess in this transaction.

Other

The lease to require the landlord to maintain an address for service in England.

SUBJECT TO CONTRACT

SUBJECT TO NHS FUNDER APPROVAL

**Guidance prepared by the Committee Members
of the Primary Care Premises Forum**

(lead Rob Hearle)

1st July 2023