

INTRODUCTION TO THE BRITISH PROPERTY FEDERATION (BPF)

SHORT-TERM COMMERCIAL LEASE

The British Property Federation (BPF) short-term commercial lease, with the related agreement for lease, aims to provide landlords and tenants with straightforward, industry-standard documentation to cover short-term commercial lettings of property, typically a few months, possibly up to two or three years. The BPF has prepared this documentation in as simple a form as possible to ensure that it can be understood by a wide audience. Where plain English can be used, it has been. More complicated terms have only been used where legal certainty requires them. However, any prospective landlord or tenant should always seek appropriate professional advice before entering into a binding agreement such as a lease, and is strongly advised to consult the pan-industry Code of Practice *Commercial Property Leases in England and Wales*¹.

With a short-term commercial letting, the landlord should be in a position to use his knowledge and experience of the property to produce a package which, so far as is possible, does not give rise to any unexpected costs to be paid by the tenant. Accordingly, the BPF short-term commercial lease provides an option for the rent to be inclusive of rates, contains no service charge and places the obligation to repair the premises on the landlord. The BPF is confident that landlords will be increasingly willing to offer such an all-inclusive product with short-term commercial lettings.

Every effort has been made to keep the tenant's obligations short and to the point. The lease deliberately omits a number of the typical provisions found in longer leases. For example, there is no obligation on the landlord to insure the premises and, therefore, no obligation on the tenant to pay the costs of any such insurance. The landlord remains, however, contractually obliged to repair the property, and many are likely to wish to insure against the costs of repairs arising from accidental damage; others may wish to carry this risk themselves. Whichever option the landlord prefers, the costs will be included within the proposed rent, which will remain fixed for the period of the lease.

It is important that tenants understand that the short-term commercial lease has been designed for property being offered for a relatively short period of occupation. The lease (and the related agreement for lease) provide for the letting to be granted **without security of tenure**. This means that, when the lease expires, the tenant will not have the legal right he or she would normally have under the Landlord and Tenant Act 1954 to apply to the Court for a new tenancy. The removal of this right does not stop the landlord and the tenant agreeing to a new lease at the end of the tenancy, but this can only occur if both the landlord and the tenant so wish. Landlords must note that, if the tenant remains in occupation after the end of the tenancy, there is a possibility that a new tenancy will be created, and that the new tenancy will have security of tenure under the 1954 Act.

Tenants wanting to guarantee that they can remain in the same business premises once the initial lease has expired should consult their professional advisers about seeking other premises where such terms are on offer. In such cases, the terms and conditions in the lease are likely to be substantially different from those in the BPF short-term commercial lease, particularly with regard to the nature and extent of the obligations placed on the tenant. Again, careful reading of *Commercial Property Leases in England and Wales*, and seeking appropriate professional advice, remain vital for both sides.

The BPF short-term commercial lease has been designed to be capable of being used for the temporary occupation of all types of property, from a shop in a parade temporarily vacant, to a short lease of office premise pending re-development. The lease has been drafted for flexibility, being capable of being used for whole buildings as well as parts of buildings and units on an estate.

The short-term commercial lease contains a number of blanks which must be completed. Landlords and tenants must ensure that all such blanks have been completed before the lease is signed. Similarly, for business rates, two options are provided (Clause **Error! Reference source not found.**). Landlords and tenants must ensure that the Clause which will **NOT** apply is deleted.

The short-term commercial lease and agreement for lease have been published following extensive consultation with a number of bodies representing property interests, including tenants. As a result of this, the documents have received a number of important endorsements. These are listed on each cover, and illustrate effectively the consensus-based approach the BPF has adopted.

¹ *Commercial Property Leases in England and Wales: Code of Practice* is produced by the Commercial Leases Group consisting of the Association of British Insurers, British Council for Offices, British Property Federation, British Retail Consortium, Confederation of British Industry, Federation of Small Businesses, Incorporated Society of Valuers and Auctioneers, Law Society, Property Market Reform Group, Royal Institution of Chartered Surveyors and is published by RICS Business Services Limited. Telephone 020 7222 7000.

GUIDANCE NOTES TO COMPLETING THE DOCUMENTATION

BY ENTERING INTO THE LEASE, THE PARTIES ARE UNDERTAKING LEGALLY BINDING OBLIGATIONS AND SHOULD ENSURE THAT THEY TAKE LEGAL ADVICE BEFORE SO DOING.

AGREEMENT FOR LEASE

After 1 June 2004 it is no longer appropriate to have an Agreement for Lease which is conditional on the lease being contracted out of security of tenure under the Landlord and Tenant Act 1954.

This is because the contracting out procedures will need to be carried out before the tenant enters into the lease and, if earlier, becomes contractually bound to do so.

Where there is an Agreement for Lease, this will be before the Agreement for Lease is exchanged. See below. The standard Agreement for Lease has, therefore, been removed.

CONTRACTING OUT OF LANDLORD AND TENANT ACT 1954

Landlords will almost invariably require short lettings documented by the short-term commercial lease to be excluded from security of tenure by compliance with the procedures under section 38A of the Landlord and Tenant Act 1954 and Schedules 1 and 2 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003.

Before 1 June 2004 parties used to contract out of security of tenure by obtaining a Court Order authorising their agreement to contract out. From 1 June 2004 the procedures to contract out have changed.

To validate an agreement to contract out three things are necessary:

1. The landlord must serve a "health warning notice" on the tenant in the prescribed form before the tenant enters into the tenancy or, if earlier, becomes contractually bound to do so. This health warning notice basically informs the tenant of the rights it is giving up by contracting out of the Act;
2. The tenant must make the appropriate declaration basically declaring that it intends to contract out the tenancy and that it has received and read the health warning notice and accepts the consequences of entering into the agreement to contract out of the Act. The form of declaration is prescribed.
 - (a) If the health warning notice is served on the tenant not less than 14 days before the tenant enters into the tenancy or, if earlier, becomes contractually bound to do so, then the tenant must make a simple declaration.
 - (b) If the health warning notice is served on the tenant less than 14 days before the tenant enters into the tenancy or (if earlier) becomes contractually bound to do so, then the tenant must make a statutory declaration under the Statutory Declaration Act 1835 before an independent solicitor or other commissioner for oaths.
3. The lease (or other instrument creating the tenancy) must contain or have endorsed on it:
 - (a) a reference to the health warning notice;
 - (b) a reference to the simple declaration or statutory declaration as appropriate;
 - (c) the agreement to exclude security of tenure, or a reference to the agreement.

From 1st June 2004 there is no longer any need to have an Agreement for Lease conditionally on the lease being contract out. The notices/declaration would have to be served/made before any Agreement for Lease as this is when the tenant would become contractually bound to enter into the lease.

THE LEASE

Main terms and Definitions

These are contained in clauses 1-Error! Reference source not found., each of which needs to be completed.

Letting and Rights

Clause 11 contains provisions which may apply where the letting comprises only part of a building, or comprises a unit on an estate.

Where the letting comprises part only a building, clause 11.1 should be used, otherwise it should be deleted. The effect of this clause is to exclude structural and external parts of the building from the letting.

If the tenant is to be granted the use of any common parts, clause **Error! Reference source not found.** is to be used; the list of common parts can be edited appropriately.

Clause 11.2 should be included where the tenant is to be granted the use of service media which also serve other premises.

Clause 11.3 gives the landlord the right to alter or close any common parts and to repair, alter and renew service media; it should be included where clauses **Error! Reference source not found.** or 11.2 are included.

Landlord's Obligations

The provision of services is governed by clause 12.2. The first item in that clause is the landlord's obligation to keep the premises in tenable repair. The subsequent items deal with common parts, service media, and applicable services. It may be necessary to edit or add to the list of services depending on the circumstances of the property and the letting.

Clause 12.2. contains the landlord's repairing obligations and ends with a proviso that the landlord is not obliged to remedy damage caused by the tenant, or to remedy fair wear and tear, or to 'improve' anything, and is not responsible for interruptions to service due to matters beyond the landlord's control. The provision that the landlord is not obliged to put anything into better condition is ideally to be supported by a schedule of condition which should be attached to the Lease. A properly drawn schedule of condition will avoid disputes as to the condition of the premises at the start of the lease. However, the provisions are workable without a schedule of condition; disputes on this issue are most unlikely to occur in the context of a short letting.

Tenant's Obligations

These are set out in clause 13. The matters set out below should be particularly noted.

- Clause 13.9 prohibits alterations or additions, including signs. Although tenants (especially of retail premises) may well require signage or want to carry out certain alterations, to include anything but an absolute prohibition would make the issue uncertain to an unsatisfactory degree. It is likely that any signage or alterations required by a tenant can be agreed between the parties before the lease is completed. (Technically the Court has the power, under Section 5 of the Landlord and Tenant Act 1927, to override the prohibition in the Lease and to authorise improvements to be carried out if the tenant can fulfil certain criteria. Those statutory provisions cannot be excluded by the Lease, but it is unlikely that they will be invoked for the type of letting for which the model form is designed.)
- Clause 13.15 contains an absolute prohibition against assigning, subletting, charging, parting with possession or sharing occupation of the property, except that sharing within a group of companies is permitted without creating a tenancy. Again, given the short term nature of the arrangements, the landlord will not want to contemplate a qualified covenant against assignment, especially because of the practical agreements at the lease negotiation stage with regard to pre-conditions.
- Clause 13.17: a suitable number of months needs to be inserted in this clause, 1-3 months is likely to be appropriate for fairly short lettings, and presently up to 6 months for longer ones

Breach of Tenant's Obligations

Clause 14 gives the landlord power to serve notice requiring the remedy of a breach of tenant's obligations and gives the landlord the power to carry out remedial works at the tenant's expense, if the tenant fails to comply with the notice.

Clause 15 gives the landlord power to sell, on behalf of the tenant, any goods which the tenant leaves behind after the end of the term.

Consequences of damage or destruction

The lease does not impose an obligation on the landlord to insure the premises. We considered that arrangements for insurance should be entirely at the landlord's discretion in the case of a short letting, provided that the tenant is given the protection of abatement of rent and the right to terminate the lease if substantial damage occurs. The landlord has a similar right of termination in such circumstances. Consequently, clause 16.1 contains provisions for the abatement of rent in the event of destruction or damage (without reference to "insured risks") and clause 16.2 gives both the landlord and the tenant a right of termination in the event of damage or destruction affecting the whole or a substantial part of the premises and which would take more than three months to restore. Given the likely context of most lettings governed by the short lease, it is likely that both parties will want to bring the relationship to an end in such circumstances.

Break Clause

Clause **Error! Reference source not found.** should be deleted if not applicable to the terms of the letting.

Execution of Lease

If the lease is to be for a term not exceeding three years, it merely requires to be signed by the landlord with a counterpart being signed by the tenant. If the term will exceed three years (which is unlikely - see the Introduction above) both parts would need to be "signed and delivered as a deed", with the signatures being witnessed and, where a party is a company, this should be undertaken in accordance with the company's rules.

Agreement for Lease

If there is no Agreement for Lease (which is the normal situation - see Introduction above) a statement to this effect is given in the Lease for Stamp Duty purposes. If the Lease is preceded by an Agreement for Lease this statement will not appear. Stamp duty on the Lease and counterpart will be payable within 30 days of the date of the Lease. The amount of stamp duty payable by the Tenant will vary according to the amount of rent and the length of the Lease. A fixed duty is payable by the Landlord on the counterpart. For further information on stamp duty, the parties should take legal advice or consult one of the Inland Revenue Stamp Offices. These are at Bush House, Strand, London EC2B 4NQ (Tel: 020 7438 7452), City House, 140/146 Edmund Street, Birmingham B5 2JG (Tel: 0121 200 2616) and The Pitney, All Saints Street, Bristol BS1 2NY (Tel: 0117 945 6874).

SHORT-TERM COMMERCIAL LEASE

IMPORTANT NOTICE

By entering into this lease the parties are undertaking legally binding obligations and should take legal advice before so doing.

It is important that tenants understand that the short-term commercial lease has been designed for property being offered for a relatively short period of occupation. The lease (and the related agreement for lease) provide for the letting to be granted **without security of tenure**. This means that, when the lease expires, the tenant will **not** have the legal right he would normally have under the Landlord and Tenant Act 1954 to apply to the Court for a new tenancy. The removal of this right does not stop the landlord and tenant agreeing to a new lease at the end of the tenancy, but this can only occur if both the landlord and the tenant so wish.

Tenants wanting to guarantee that they can remain in the same business premises once the initial lease has expired should consult their professional advisers about seeking other premises where such terms are on offer. In such cases, the terms and conditions in the lease are likely to be substantially different from those in the BPF short-term commercial lease, particularly with regard to the nature and extent of the obligations placed on the tenant.

The BPF short-term commercial lease, and related agreement for lease, have been prepared with the overriding objective of offering a better service to business tenants. A wide-ranging consultation exercise was undertaken before the final versions of these documents were published, and many of those consulted have offered formal statements of support. The names of supporting organisations are set out on the cover. The BPF is confident that the use of this straightforward documentation will do much to enhance the relationship between landlords and tenants.

Landlords and tenants must remember that while the short-term commercial lease has been published as a standard form, it contains clauses which can be amended, or deleted, following amicable discussion between the parties.

Both landlords and tenants are strongly advised, in addition to obtaining legal advice, to consult the pan-industry document *Commercial Property Leases in England and Wales: Code of Practice* (RICS Business Services 2007) before signing this document.



BRITISH PROPERTY FEDERATION

COMMERCIAL LEASE

MAIN TERMS AND DEFINITIONS

- 1 The Landlord is Bernard McGowan of The Workstation, Suite 5a., 42a., Watling Street Radlett, WD7 7NN
- 2 The Tenant is Adeilson Moreira Da Costa of 63b., Sellons Avenue, London NW10 4HH
- 3 The Premises are all of the ground floor shop premises situated at 60, Craven Park Road, London NW10 4AE
- 4 The Term of this lease begins immediately and ends on 29th January 2031.
- 5 The Rent is £28,000 per year (exclusive of Value Added Tax) and is payable in advance by equal monthly payments
- 6 Rent Review date 30th January 2027 based on the Consumer Price Index (CPI) at that date.
- 7 The Rent begins to be payable on 30th January 2023
- 8 The Tenant has paid a Deposit of £5,000 to the Landlord which the Landlord will place in a bank deposit account (whether or not containing other money) on which a reasonable rate of interest is payable. The Landlord will repay the Deposit to the Tenant with accrued interest once the Tenant has vacated the Premises at the end of the Term (however it ends), but less deductions properly made by the Landlord to cover any unpaid Rent and the actual or anticipated cost of remedying any breaches of the Tenant's Obligations under this lease.
- 9 The Permitted Use of the Premises is as Pizza Restaurant (class E Use Classes Order 1st September 2020)
- 10 The Landlord lets the Premises to the Tenant at the Rent for the Term.
- 11 The Landlord grants to the Tenant the following rights and makes the following reservations:
 - 11.1 The Premises form only part of a Building. They do not include any part of the main structure, foundations, roof or exterior of that Building but they do include window frames and glass, doors and door frames, raised floors and suspended ceilings and the voids above and below them, light fittings and other landlord's fixtures and fittings;
 - 11.2 The Tenant is granted the non-exclusive use of Service Media (meaning any ducts flues gutters pipes drains sewers cables conduits wires or other media for conducting water soil gas electricity and telecommunications) which serve the Premises and which may serve other premises, but must

use them in a reasonable and proper manner in accordance with any regulations imposed from time to time by the Landlord;

- 11.3 The Landlord reserves the right to alter or close any Common Parts subject to providing (except in emergencies) reasonably suitable alternative amenities, and reserves the right to use (and repair, alter or renew) any Service Media in the Premises which serve other premises;
- 11.4 The Landlord also reserves the right to enter the Premises for the purposes and on the terms set out elsewhere in this Lease. The right of entry will only be exercised following reasonable notice, except in the case of an emergency.

LANDLORD'S OBLIGATIONS

12. The Landlord's Obligations to be observed throughout the Term are:

- 12.1 As long as the Tenant pays the Rent and complies with the Tenant's Obligations, the Landlord will give exclusive possession of the Premises to the Tenant during the Term without interference by the Landlord or any superior landlord or any person deriving title under or in trust for either of them;
- 12.2 The Landlord will use reasonable endeavours to provide the following Landlord's Services:
- (1) keeping the Premises in tenable condition;
 - (2) keeping in tenable condition the Common Parts if applicable and the structure of the building of which the Premises form part;
 - (3) keeping Service Media in working order;

but the Landlord is not obliged to:

- (a) remedy damage caused by the Tenant, or
- (b) remedy fair wear and tear, or
- (c) put the Premises or any Common Parts or any Service Media into better condition than at the date of this Lease as described or shown in the attached Schedule of Condition,

and the Landlord is not responsible for interruptions in any of the Landlord's Services due to matters beyond the Landlord's control.

TENANT'S OBLIGATIONS

13. The Tenant's Obligations to be observed throughout the Term are:

- 13.1 the Tenant will pay the Rent immediately it falls due without any deduction or set off and (if required) by bank standing order or credit transfer to the Landlord's bank account;
- 13.2 the Tenant will pay any value added tax chargeable on the Rent and any other sums payable under this Lease, at the same time as the sum on which it is charged;
- 13.3 the Tenant will pay interest on any Rent or other sum payable under this Lease which is overdue for 7 days after its due date, calculated (both before and after any court judgment) at 4% per year above the Bank of England base rate for the period from the due date until payment;
- 13.4 the Tenant will pay all charges for all water, gas, electricity, telephone and similar services consumed on the Premises, and will pay a fair proportion of any which relate to both the Premises and other premises;

- 13.5 the Tenant will reimburse the Landlord one third of the buildings' insurance premium arranged by the Landlord
- 13.6 the Tenant will use the Premises carefully and will not damage them, but normal fair wear and tear is permitted;
- 13.7 the Tenant will comply with all legislation applicable to the Tenant's use of the Premises; the Tenant will not do anything which may result in a statutory requirement arising for work to be carried out on the Premises or any other premises of the Landlord;
- 13.8 the Tenant will immediately give the Landlord a copy of any notice relating to the Premises or its use which the Tenant receives and will also notify the Landlord of any damage to or want of repair in the Premises or the building of which they form part, as soon as reasonably possible after becoming aware of it;
- 13.9 the Tenant will not make any alteration or addition to the Premises (including displaying any signs, posters, advertisements, etc.) inside or outside, and will remove any unauthorised alterations or additions on demand;
- 13.10 the Tenant will use the Premises only for the Permitted Use and only during the Hours of Use, and will notify the Landlord immediately if the Tenant ceases to occupy the Premises at any time during the Term;
- 13.11 the Tenant will not apply for, or implement, any planning permission in respect of the Premises without the prior written consent of the Landlord;
- 13.12 the Tenant will not do anything which is a nuisance or annoyance to the Landlord or to the owners or occupiers of any adjoining or neighbouring property, or use the Premises for any illegal or immoral purpose, or hold an auction or public exhibition or public or political meeting on the Premises;
- 13.13 the Tenant will not, save in the ordinary course of the Tenant's business (and then only in accordance with all relevant laws and regulations) permit any contaminative or hazardous substances to be on or to be discharged from the Premises; the Tenant will not otherwise cause contamination or pollution at under or from the Premises;
- 13.14 Subject to the Tenant having been provided with appropriate details of such policy, the Tenant will not do anything which may invalidate any insurance policy relating to the Premises or other Premises of the Landlord or which may increase the premiums for that insurance;
- 13.15 the Tenant will not assign, sublet, charge, part with possession of, or share the occupation of, the whole or any part of the Premises, except that if the Tenant is a limited company it may (by licence but not subletting) share occupation with another company in its group (as defined in Landlord and Tenant Act 1954 section 42(1));
- 13.16 the Tenant will allow the Landlord to enter the Premises (with other persons authorised by the Landlord) for the purposes set out in clause 14.2, for performing the Landlord's Obligations under this Lease, and for all other reasonable and proper purposes, at reasonable times after giving the Tenant (except in emergency) reasonable prior notice; the persons entering the Premises must cause as little disturbance as reasonably possible and must make good all damage caused to the Premises;
- 13.17 during the last 3 months of the Term, the Tenant will allow the Landlord to display a notice for re-letting the Premises in a reasonably suitable place on the Premises;

13.18 the Tenant will, at the end of the Term (however ending), give vacant possession of the Premises to the Landlord in the condition required by this Lease and will remove from the Premises the Tenant's goods and fixtures and fittings including signs and make good all damage caused to the Premises by their removal and will leave the Premises in a tidy condition, free of rubbish;

13.19 the Tenant will pay all reasonable costs and expenses incurred by the Landlord in connection with:

- (a) any application by the Tenant for an approval or consent (whether or not it is given, unless unlawfully withheld); or
- (b) in (or in contemplation of) the preparation and service of any notice of a breach of the Tenant's Obligations under this Lease including statutory notices, even if forfeiture (if applicable) is avoided otherwise than by court order.

BREACH OF TENANT'S OBLIGATIONS

14. If the Landlord serves on the Tenant a written notice specifying anything required to remedy a breach of the Tenant's Obligations under this Lease:

14.1 the Tenant will comply with the notice within one month (or immediately in emergency);

14.2 if the Tenant fails to do so, the Landlord has the right to enter the Premises and remedy the breach and the Tenant will pay to the Landlord on demand, as a debt, all costs and expenses so incurred by the Landlord.

TENANT'S GOODS AT THE PREMISES

15. If the Tenant leaves any goods in the Premises at the end of the Term (however it ends), the Tenant authorises the Landlord to sell those goods on behalf of the Tenant. The Landlord shall account to the Tenant for the proceeds less the Landlord's reasonable expenses.

CONSEQUENCES OF DAMAGE OR DESTRUCTION

16. If the whole or part of the Premises becomes inaccessible or unfit for use due to damage or destruction (other than as a result of anything the Tenant does or fails to do):

16.1 the whole or an appropriate proportion (having regard to the nature and extent of the destruction or damage) of the Rent and other payments under this lease shall cease to be payable until the Premises are fully accessible and fit for use; and

16.2 if the damage or destruction affects the whole or a substantial part of the Premises and it is likely to take more than three months to make the Premises again fully accessible and fit for use, either the Landlord or the Tenant may terminate this Lease by giving written notice to the other, in which event this Lease will immediately end and the Landlord need not carry out any repairs or reinstatement.

FORFEITURE

17. The Landlord may forfeit this Lease by re-entering the Premises (or part of them as if entering the whole) if:

- (1) any Rent or other sums are overdue for 14 days or more (whether or not demanded), or
- (2) if any of the Tenant's Obligations under this Lease are not performed or observed, or
- (3) if the Tenant (being an individual) becomes bankrupt, or
- (4) if the Tenant (being a company) enters into liquidation whether voluntary or compulsory (unless for the purpose of reconstruction or amalgamation) or has a receiver or administrative receiver

appointed over any of its assets or is the subject of a petition for the appointment of an administrator, or

(5) if the Tenant enters into an arrangement or composition with creditors,

and on re-entry the Term will end but the Landlord will retain any accrued rights in respect of breaches of the Tenant's Obligations.

GENERAL PROVISIONS

18. Notices relating to this Lease or to the Premises may be served in accordance with Law of Property Act 1925 section 196.
19. It is agreed that:
- 19.1 the Tenant will not have any rights over any property of the Landlord or the benefit of any obligations on the part of the Landlord, except as set out in this Lease;
- 19.2 where a party to this Lease comprises two or more persons, they are responsible for all their obligations both jointly and individually;
- 19.3 where this Lease obliges the Tenant not to do something, the Tenant is also obliged not to permit it to be done by any person under the Tenant's control;
- 19.4 headings are given in this Lease for convenience only and do not affect the meaning of the text.
20. There is no written agreement for the grant of this lease.

SIGNED by the LANDLORD

B. J. Jones

SIGNED by the TENANT

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DATE OF THIS LEASE:

30.01.2023