

UNDERSTANDING THE COMMERCIAL LEASE
Australian Institute of Conveyancers
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1 INTRODUCTION

'The devil is in the detail', that is my motto when preparing a commercial lease.

This paper is a trip through the 'basics' of completing commercial leases. However, I understand that a number of more experienced people are also attending. Accordingly, I have also included some more detailed information in this paper.

At the end of this paper, I hope that you will have an understanding of:

- (a) the things to note when completing a lease frontsheet;
- (b) when the Law Society lease is most useful;
- (c) the pitfalls when completing the Law Society lease;
- (d) the contents of the lease proposal - when to ask for more information;
- (e) how to correctly include the information in the heads of agreement into a standard lease reference schedule; and
- (f) common requirements of landlords in relation to bank guarantees and certificates of currency.

My paper does not deal with stamp duty as my colleague Gary Newton is covering it in his paper. This is intended to be a practical paper and so I have kept case law to a minimum.

2 THINGS YOU NEED TO START PREPARING A LEASE

I suggest that you obtain the following items before you start preparing the lease:

- (a) title search of the premises; and
- (b) company search of any landlord and tenant companies. If you commonly act for a landlord client, you may have the ACN/ABN and address for service of notices on file.

3 COMPLETING A LEASE FRONTSHEET

I summarise the points to be aware of when completing each item of the lease frontsheet below, using the letters and numbering on the lease frontsheet. I have attached a lease frontsheet to this paper for ease of reference.

I have included comments for subleases in this section where relevant. I note that the form for use when preparing a sublease is different.

(A) Torrens Title

This is the section where you include the description of the premises that are being leased.

Describing the land

You will need to describe the premises using the legal description of the land, rather than a street address, unless the lease is for an entire piece of land and the lease is not being registered.

If you have only been given a street address, then you can often obtain the legal description of the land by searching the address on the LPMA website.

Car parking spaces

Office space is often leased with the ability to use car parking spaces that are separate to the office space. Car parking spaces can be either leased to the tenant or licensed.

The lease proposal will often state how they will be provided. If it does not, you will need to ask for more information from your client. Licences are seen as being more flexible as they enable the landlord to move the location of the parking space or to allow the tenant to use any space in a particular area.

You should only include references to the car parking spaces in this section if they are being leased to the tenant. If the car parking spaces are being licensed, the licence arrangement can be dealt with either by a separate clause in the lease or a separate licence agreement.

The same issue arises in relation to licences of storage space.

Suggested wording

Suggested wording lease of a whole piece of land:

'Folio identifier [insert number] known as [insert address]

Suggested wording lease of part of an office building:

'PART Folio identifier [insert number] known as suite [#] being part of [insert address]'

When you are only leasing part of a building

When acting for a landlord who owns a building with more than one office in it, I recommend that the landlord have a plan of the building which identifies all of the offices by an individual number. This will prevent the need to identify the premises by attaching a plan to the lease.

The LPMA has strict requirements in relation to plans - they must be drawn to scale, contain a northpoint and be signed by all parties. There is also an additional registration fee.

(B) Lodging party

If your firm uses a third party such as Legalities to lodge the lease, then only complete the section next to the heading 'Reference:'.

I commonly insert my initials and the matter number eg CLH: 290123 This assists with dealing with any questions the LPMA have when you lodge the lease for registration.

The third party who lodges the lease for registration will complete the balance of the details.

If your firm lodges its own leases, then you will need to:

- (i) ask the lodgement clerk for the number of your Document Collection Box at the LPMA. Your firm may not have one as often completed registered leases are returned by post.

If you have a number, then insert it in the first section.

- (ii) Insert your firm details in the middle.

- (iii) Leave the last section headed 'CODE' blank.

This section can be completed by hand before lodgement if necessary.

(C) Lessor

The name of the landlord must match the name on the title to the land.

In NSW we do not make any mention of the capacity in which the landlord holds the land on the lease frontsheet. Therefore, if the landlord owns the land as the trustee of a trust, that fact will not be mentioned on the frontsheet.

(D) Encumbrances

Just under this section is the word 'Encumbrances (if applicable):'.

An encumbrance is a mortgage or charge over the property.

You can insert the registered numbers of those mortgages or charges that take priority over the lease in this section. It is common now to leave this section blank. It is safe to do so if the lease provides that it is subject to the mortgage/charge and also if the mortgages or charges are already registered on the title.

(E) Lessee

Include the name and ACN or ABN of the tenant here. These details can be obtained from a company search. You do not need to include an address.

(F) Tenancy

This section contains the heading 'Tenancy:' and a box headed 'click and pick' next to it.

The box allows 4 options for a tenancy:

- (i) Joint tenants
- (ii) Tenants in common in equal shares
- (iii) Tenants in common in unequal shares
- (iv) Single (blank space)

If you have only one tenant, click the last option. That will leave the box blank when the form is printed.

If you have two or more tenants, the most satisfactory situation for a landlord is that those tenants would be joint tenants eg equally entirely liable for any breach of the lease.

(G) 1 Term

This is the length of the lease. This is usually done in a years/months/days format.

Eg: 4 years, 3 months and 4 days

2 Commencing date

This is also known as the 'commencement date' or the 'start date' in lease proposals.

It can be entered in any format eg 12/03/2010 or 12 March 2010.

If the lease will commence after the landlord has carried out works (eg there is no fixed date), you may need to leave this section and the terminating date blank.

If you do, you need to make provision, either in the lease or in a side letter, as to how the commencing date will be determined and whether one party has an automatic authority to insert it.

Please refer to my comments in paragraph #

3 Terminating date

This is also known as the 'expiry date' or the 'end date' in lease proposals.

It can be entered in any format eg 12/03/2010 or 12 March 2010.

Make sure that the time between the commencing date and the terminating date is the same length as the term!

If you are preparing a sublease remember that the terminating date of the sublease must be one day earlier than that of the head lease to avoid the sublease being deemed to be an assignment of lease.

4 Option to renew

If there is no option to renew, click the boxes that appear in each blank space to insert: 'N.A.'.

If there is an option to renew - complete as shown on the example form.

If there is more than one option to renew, insert wording in either of the following in the first blank section:

For multiple options each with the same length of term:

'[number of options] x [length of option term] years'

Eg: '2 x 5 years'

OR

'[term length] + [term length] + [term length]'

Eg: 5 years + 5 years

For multiple options each with a different length of term:

'[term length] + [term length] + [term length]'

Eg: 5 years + 3 years + 3 years

Note: A lease cannot be granted if that lease starts on a date more than 21 years after the start of the first lease in the series. If it does, it will be void (*s120A(3) Conveyancing Act 1919*).

Accordingly, if a landlord wants to grant a lease where one or more of the options start more than 20 years after the start date of the first lease, the options will not be valid.

In those cases you may need to restructure the lease terms.

If you are preparing a sublease, remember that the term of the sublease plus any options cannot exceed the term of the headlease.

If it does, then the sublease will need to be split into two subleases (one under the current headlease and one under the headlease that may follow). The first sublease will need to provide for:

- (i) whether the sublandlord is required to exercise an option or enter into a new lease with the landlord in order to give effect to the second sublease; and
- (ii) what that new sublease might look like.

There will still need to be one day between the end of the first sublease and the expiry of the headlease.

5 Option to purchase

Usually a commercial office lease for part of a building will not contain an option for the tenant to purchase the premises.

In that case, click the boxes that appear in each blank space to insert: 'N.A.'.

If the lease does contain an option to purchase, you will need to attach a contract for the purchase of the land in order to prevent the option to purchase from being void for uncertainty.

6 Rights

This section relates to a time when it was common to have a short summary of the landlord's rights before the start of the bulk of the lease. That is no longer common.

It is common to now either:

- (a) delete the words 'clause of' and include the word 'Annexure' in the blank space; or
- (b) click the boxes that appear in each blank space to insert: 'N.A.'.

7 Annexure(s)

If the annexure is labelled with a number or letter, you could insert those numbers or letters in the blank space. However, if you refer to one of the annexures here, you will need to refer to all of them.

This can be inconvenient as some schedules have headings such as: 'Reference Schedule' rather than letters or numbers.

I usually leave this space blank as it will then pick up all of the annexures to the lease.

8 Ability to include registered lease memoranda or registered leases as part of the lease

Registered memoranda

Some landlords register the terms of their lease annexures at the LPMA. Those terms can then be incorporated into this section by referring to the registered number of that memoranda in this section rather than attaching long provisions to the lease.

It is not necessary to refer to the registered number of the memoranda in this section to incorporate it. It can be incorporated by reference in a lease annexure instead. It is often easier to incorporate the memorandum by reference in an annexure if you propose to make changes to the memorandum.

Do not refer to the memorandum number on both the frontsheet and in an annexure (unless you have very careful wording in the annexure). If you do so, there is the risk that you will have incorporated the memorandum twice, once with no changes, and once with the changes in the annexure.

Registered leases

You may wish to include the provisions of a previous lease into the lease you are drafting in order to keep the lease short eg if a tenant has exercised an option.

This section gives you the ability to include the provisions of a registered lease into this lease. I do not recommend that you use it for this purpose.

This is because when incorporating a lease 'by reference' on the lease frontsheet, you incorporate the entire lease including the frontsheet and the reference schedule. Not all of this information will be relevant.

I recommend that you incorporate the relevant provisions of the lease into the lease you are drafting by reference to the specific provisions of the lease in the annexure eg: 'all of the lease apart from the lease frontsheet and the reference schedule of registered lease #' or ' annexures A, B and C of registered lease #'.

9 Rent

This section refers to where the rent is specified in the lease.

The most common method is referring to an item in the reference schedule so that the completed line reads as follows:

'The rent is set out in **Item No.10 of Reference Schedule.**'

(H) Execution

Select the most appropriate form of execution clause. The clause will then display automatically.

The second option is often not used as it is not necessary for companies to use a common seal.

In the third option there is the ability to:

- (a) click on a drop down box to state that the company relies on s127 Corporations Act (you should click on this); and
- (b) to insert the name of the landlord or tenant (as relevant).

These details can be completed by hand later, but it is tidier to insert them here.

If the lease has a term of 3 years or more, it will need to be registered. In that case, if the lease is being signed under a power of attorney (eg option 4), the power of attorney will need to be registered in the deeds register of the LPMA. The execution clause provides for the registration number (which is in a Book [number] No. [number] format).

The power of attorney in this case will need to be registered before it is used to sign the lease.

If your client chooses to sign under option 5, it is likely to have to provide a copy of the company resolution which authorises the relevant officer of the company to sign the lease (if not to the LPMA, certainly to the other side!).

(H) Statutory declaration

This part of the form will need to be completed if the previous lease of the property:

- (a) contained an option; and
- (b) that option expired after the start date of the lease you are drafting.

It is a statutory declaration that is made by the landlord and states that the previous tenant did not exercise its option.

The best place to find out this information is from a title search of the property.

(I) Page numbering on the foot of each page

You will need to insert the total number of pages in the lease (including any annexures and plans) in the footer of the form.

Each page of the lease must be numbered at the foot of each page in the centre in the following format: 'Page # of [insert total number of pages]'.

4 SIGNING THE LEASE

The LPMA has specified requirements in relation to how a lease must be signed if it is to be registered. These requirements can change.

The current requirements are that the first and last page of each annexure and every page of a plan must be signed in full.

The lease frontsheet does not need to be signed (apart from the execution clause). The LPMA considers indexes and schedules to the lease to be separate annexures for signing purposes.

If your lease contains an execution clause separate to the lease frontsheet, the parties do not need to sign both execution clauses. If this is the case, the execution clause in the lease frontsheet should contain wording similar to: 'Refer to annexure'.

5 THE NSW LAW SOCIETY LEASE

5.1 General comments

The NSW Law Society lease is a multi-purpose lease. As such, I recommend that you read each clause carefully and determine whether it is suitable for inclusion in your lease or whether it needs to be amended.

If you make more than a few amendments, consider whether the lease is appropriate for use with your building.

The lease is made up of:

- (a) the standard lease frontsheet;
- (b) annexure A - which contains the commercial terms and special conditions;
- (c) annexure B - which contains the standard terms and a certificate under s16 of the *Retail Leases Act 1994*. Any changes to the standard terms must be made in a separate schedule (or as part of the special conditions in annexure A); and
- (d) a certification to be made by the landlord's solicitor that annexure B has not been amended other than in a separate schedule.

5.2 Common pitfalls

Some of the common pitfalls that arise when completing the NSW Law Society lease are:

(a) Item 10

Item A - Guarantor

Not including an address.

Item B - Guarantor

Not specifying that the guarantor's liability is unlimited or that the limit on the guarantor's liability is 'not applicable'.

(b) Option to renew heading

Inserting incorrect option terms or failing to ensure that the start and end dates of the option terms are correct.

I often refer to a date 'five years after the commencing date' as the start date of an option, rather than using a specific date. This limits the possibility of error if the lease commencing date changes and also limits the work you need to carry out in that case.

Under point C of this heading - make sure that the maximum period of the tenancy is correct.

(c) Item 13 - Rent

It is not necessary to specify that GST is payable in addition to the rent as the lease contains a GST clause.

Do not include GST in the rent unless you specify that the rent is GST inclusive (otherwise GST will be counted twice).

(d) Item 14 - Outgoings

The lease only lists rates and insurance as outgoings. Many people forget that the tenant is able to contribute to a greater range of outgoings than these. Make sure that you add the additional outgoings or refer to a special condition that includes a greater range of costs as outgoings in this part of the form.

Check that the share of outgoings specified in section A is correct. Many people forget that if the premises are strata premises, the share of the outgoings will be 100%.

6 COMPLETING A STANDARD LEASE USING A LEASE PROPOSAL

This section of the paper will be by way of visual demonstration and discussion.

The relevant example annexures are:

- (a) lease proposal; and
- (b) lease reference schedule,

and are attached to the end of this paper.

7 CONTENTS OF A LEASE PROPOSAL - WHEN YOU NEED TO KNOW MORE

7.1 Common lease instructions

It is common to receive instructions from clients to prepare a lease and for those instructions to relate to only the: premises, rent, lease term and the tenant name.

You will need to seek further instructions in that case. As a legal assistant preparing a first draft of a standard 'firm' lease, you would need to know:

- (a) when and how the rent was to change (eg CPI, fixed increase or market reviews);
- (b) whether the tenant pays outgoings and if so, what outgoings they pay and what the share of the outgoings will be;
- (c) when the lease will start; and
- (d) what security will be provided.

There are a number of other items that need to be considered when preparing a lease. I list those items and the questions that will need to be asked in paragraph 4.2.

7.2 General comments on items that a lease proposal should address

I suggest that the following items should be considered when preparing or reviewing a lease proposal. I have found that if you do so, you are likely to reduce the lease negotiation time.

This is not a complete list of items that must be addressed, just a list of items that I have found create issues if they are not addressed at an early stage of negotiations.

You may not include all of them in the proposal, however a review of them may raise issues that your client realises that it needs to address.

(a) Have the premises been surveyed?

If the area of the premises is not known, then express the rent as an amount per square metre and insert '(subject to survey)' after the description of the rent amount, unless the tenant has agreed on a fixed rent, regardless of the area.

Consider if you want to express a maximum and minimum rent to give certainty to the parties.

If premises have not been surveyed and are not going to be surveyed, check the area carefully as often it can be more or less than the estimated area in the lease proposal. In those cases, by the time you find this out it can be too late to consider other premises even if you are legally able to do so.

(b) Incentives

Is the tenant receiving a rent free period or a fitout incentive?

If it is receiving a fitout incentive, how is it paid - in installments during the fit out or when the fitout is completed? Who owns the fitout paid for by the incentive?

State whether the rent free period includes outgoings and carparking fees. (Usually rent free does not include outgoings or carparking fees.)

Will the rent free be provided in one period at the start of the lease or spread over the term of the lease?

Will the rent free be required to be repaid if there is an assignment of the lease or the lease is terminated or surrendered?

Consider if it will be referred to in the lease (and so be public information) or will be included in a side deed.

(c) Gross rent/ increases in outgoings

If your landlord client wants to grant a 'gross lease' or to provide that the rent 'is inclusive of outgoings', check whether your client intends to provide that the tenant will pay/contribute to the amount by which the cost of the outgoings in a relevant year is greater than that in a base year.

If so, ensure that this is provided for in the lease proposal and that the base year for the calculation of outgoings is stated clearly.

Be aware when acting for a tenant that a lease proposal may provide that the lease is a 'gross lease' or that the rent 'is inclusive of outgoings' and that the lease may actually provide that the tenant must pay increases in outgoings over the cost of the outgoings in the base year.

(d) Commencing date is not certain

If the commencement date is not certain eg the lease will start when landlord's works are completed, then it is helpful to include in the lease proposal a method for determining when the lease will commence. You need to consider whether if the lease negotiations or landlord's works are delayed the lease commencement date should be delayed.

(e) Time for exercise of option

The trend now is for notice to be required between 6 and 9 months before lease expiry, which can be too long for some tenants.

(f) Insurance requirements

Landlords can seek to be named as an insured party on the tenant's policy. I recommend that this be avoided and the interest of the landlord only noted on the policy. This is because it is either very expensive and difficult or not possible to insure the interest of a third party.

Some landlords ask for copies of insurance policies. Large tenants or tenants with multiple tenancies may not be able comply with this. Accordingly, you may wish to provide in the lease proposal that the tenant will only provide certificates of currency.

(g) Access requirements

Is it important for your client to be given 7 day a week, 24 hour a day access to the building?

(h) Airconditioning

When acting for a tenant:

-
- (i) find out the cost of after hours air conditioning, and whether the premises have their own air conditioning unit; and
 - (ii) consider whether you need to obtain a report about the condition of the air conditioning unit. Leases often require the tenant to take out a maintenance contract in respect of the air conditioning unit if it services only the particular premises.
 - (iii) who will be responsible for capital or structural repairs to the air conditioning unit?

If the unit only services the particular premises then the landlord will usually require that the tenant maintain it.

(i) Physical due diligence

This is not a question for the lease proposal, but suggest that your tenant client carry out a physical due diligence on the property or at least ask other tenants about whether there are any issues with leakage or the provision of services.

It will be too late to address these issues once the lease is signed.

(j) Make good obligations

There are three main situations:

- (a) tenant will not remove its fitout;
- (b) tenant will remove the fitout installed by it, but leave any fitout that existed when it took occupation of the premises; and
- (c) tenant will remove the fitout installed in the premises by any tenant (return to base building).

The obligations of the tenant will be determined at the time the lease proposal will be entered into.

Also consider whether the tenant will have an obligation to repaint or recarpet the premises.

(k) Landlord's works

List the work that the landlord must carry out in detail. Then specify when it must be completed eg by the commencement date (if you use this format, you need to make sure that you have a fixed commencement date or the landlord's obligation is meaningless).

If the landlord's works are specified in detail in the lease proposal, it may not be necessary to refer to them in the lease. You may chose to include them in any side deed entered into in relation to a lease incentive.

Consider if you want to fitout the premises before the lease commencement date. If so, state that in this paragraph.

Should the landlord have an obligation to maintain the building in good repair subject to the tenant's obligations to do so under the lease?

(l) Security

Consider the type of security the tenant will provide.

Will directors of the tenant provide personal guarantees?

Would the landlord agree to a higher bank guarantee in lieu of a requirement for directors to provide personal guarantees?

(m) Legal costs

Who pays the landlord's lease preparation costs and mortgagee's consent fees?

Does the tenant pay for the lease negotiation costs?

Does each party pay for its own costs? Be aware that in a sublease it is not sufficient to use this sentence alone to deal with costs.

If the lease is a sublease - you need to consider who pays for the head landlord's legal fees. These fees may include: landlord's administration fee, legal fees and mortgagee's consent fees.

(n) Green leasing/ Environmental provisions

Does the lease place any obligations on either party in relation to environmentally sustainable practices?

Can the tenant and its fitout contractor comply with those provisions?

(o) How binding is the proposal?

When do the parties intend to be bound to the transaction?

Commonly, the lease proposal is not binding in commercial transactions and it requires lease execution and possession to be bound.

Be aware of this requirement - tenants should not fit out or spend money until the lease is binding on both the landlord and the tenant.

8 LANDLORD'S REQUIREMENTS : BANK GUARANTEES & CERTIFICATES OF CURRENCY

A tenant will not be given access to premises unless it has provided the signed lease, bank guarantee and certificate of currency of insurance.

8.1 Bank guarantees

A summary of landlords' common requirements in relation to bank guarantees are:

- (a) must be given by the tenant in favour of the landlord;
- (b) as security for 'obligations under a lease of [description of premises]'

A reference to the bank guarantee being a 'rental bond' will not be acceptable as then it is arguable that it cannot be used for breaches of lease other than non-payment of rent;

- (c) without an expiry date.

Consider whether you wish to negotiate an expiry date such as 6 months after the end of the lease if the tenant's bank has an issue about providing a bank guarantee without an expiry date; and

- (d) which cannot be assigned.

Be aware that some banks provide bank guarantees that cannot be assigned.

8.2 Certificates of currency of insurance

A summary of landlords' common requirements in relation to proof of insurance are:

- (a) the tenant is the insured party;
- (b) the interest of the landlord (and maybe a mortgagee) is noted on a certificate of currency of insurance;
- (c) the premises is shown as an insured address;
- (d) the correct insurance and level of insurance is taken out, such as:
 - (i) public liability insurance - to a certain amount;
 - (ii) plate glass - to its replacement value;
 - (iii) possibly the tenant's fitout; and
 - (iv) possibly workers' compensation (in this case the landlord's interest would not be noted on the policy).

9 NEW LEGISLATION

The *Building Energy Efficiency Disclosure Bill 2010*, known as 'Mandatory Disclosure' will affect the way in which commercial office buildings are leased, particularly areas over 2,000 square metres. It is expected to become law on 1 July 2010 and for the mandatory disclosure provisions to become operative in October 2010.

I have attached my recent paper in relation to this Bill to this paper.

The Unfair Contracts Legislation that will also become law on 1 July 2010. It is not expected to affect commercial leases at this stage on the basis that a commercial lease will not be 'wholly or predominantly for personal, domestic or household use or consumption'.

10 BEWARE THE STANDARD LEASE

Finally, and somewhat ironically given the topic of this paper, I strongly suggest that you be very careful when completing standard leases.

Please do not fall into the trap of merely completing the schedule of the lease and not making certain that the provisions in the lease both appropriately support the schedule and contain the terms negotiated as part of the lease proposal.

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LEASE

New South Wales
Real Property Act 1900

Leave this space clear. Affix additional pages to the top left-hand corner.

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

STAMP DUTY

Office of State Revenue use only

(A) TORENS TITLE

Property leased

(B) LODGED BY

Document Collection Box	Name, Address or DX, Telephone, and Customer Account Number if any Reference: _____	CODE L
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(C) LESSOR

The lessor leases to the lessee the property referred to above.

(D)

Encumbrances (if applicable): _____

(E) LESSEE

TENANCY: CLICK & PICK >>>

(F)

- (G) 1. TERM** _____
- 2. COMMENCING DATE** _____
- 3. TERMINATING DATE** _____
- 4.** With an **OPTION TO RENEW** for a period of _____ set out in clause _____ of _____
- 5.** With an **OPTION TO PURCHASE** set out in clause _____ of _____
- 6.** Together with and reserving the **RIGHTS** set out in clause _____ of _____
- 7.** Incorporates the provisions or additional material set out in **ANNEXURE(S)** _____ hereto.
- 8.** Incorporates the provisions set out in _____ with the Land and Property Management Authority as No. _____
- 9.** The **RENT** is set out in _____ No. _____ of _____

DATE

(H) From the list below select the required form of execution by the LESSOR.

- Standard
- Corporation With Seal
- Corporation Without Seal
- Attorney
- Authorised officer of a corporation or of a government department or authority

From the list below select the required form of execution by the LESSEE.

- Standard
- Corporation With Seal
- Corporation Without Seal
- Attorney
- Solicitor, licensed conveyancer or barrister for the lessee
- Authorised officer of a corporation or of a government department or authority

(I) STATUTORY DECLARATION *

I
solemnly and sincerely declare that—

1. The time for the exercise of option to in expired lease No. has ended; and
2. The lessee under that lease has not exercised the option.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act 1900.

Made and subscribed at in the State of New South Wales
on in the presence of—

Signature of witness: Signature of lessor:

Full name of witness:

Address of witness:

Qualification of witness: [tick one]

- Justice of the Peace
- Practising Solicitor
- Other qualified witness [specify]

* As the Land and Property Management Authority may not be able to provide the services of a justice of the peace or other qualified witness, the statutory declaration should be signed and witnessed prior to lodgment.

LEASE
New South Wales
Real Property Act 1900

Leave this space clear. Affix additional pages to the top left-hand corner.

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STAMP DUTY

Office of State Revenue use only

(A) **TORENS TITLE**

Property leased
PART FOLIO IDENTIFIER 1/234567 being suite 2.01

(B) **LODGED BY**

Document Collection Box	Name, Address or DX, Telephone, and Customer Account Number if any Reference: CLH: 290073	CODE L
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(C) **LESSOR**

123 PTY LTD ACN 100 200 300

The lessor leases to the lessee the property referred to above.

(D)

Encumbrances (if applicable):

(E) **LESSEE**

ABC PTY LTD ACN 456 789 123

(F)

TENANCY:

- (G) 1. **TERM** 5 years
2. **COMMENCING DATE** 1 March 2011
3. **TERMINATING DATE** 28 February 2016
4. With an **OPTION TO RENEW** for a period of 3 years set out in clause [#] of Annexure
5. With an **OPTION TO PURCHASE** set out in clause N.A. of N.A.
6. Together with and reserving the **RIGHTS** set out in clause of Annexure
7. Incorporates the provisions or additional material set out in **ANNEXURE(S)** hereto.
8. Incorporates the provisions set out in N.A. with the Land and Property Management Authority as No. N.A.
9. The **RENT** is set out in item No. 6 of Reference Schedule

DATE

(H) Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the corporation named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.

Corporation: 123 PTY LTD
Authority: section 127 of the Corporations Act 2001

Signature of authorised person: _____ Signature of authorised person: _____
Name of authorised person: _____ Name of authorised person: _____
Office held: Director Office held: Secretary

Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the corporation named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.

Corporation: ABC PTY LTD
Authority: section 127 of the Corporations Act 2001

Signature of authorised person: _____ Signature of authorised person: _____
Name of authorised person: _____ Name of authorised person: _____
Office held: _____ Office held: Sole Director/Secretary

(I) **STATUTORY DECLARATION ***

I

solemnly and sincerely declare that—

1. The time for the exercise of option to _____ in expired lease No. _____ has ended; and
2. The lessee under that lease has not exercised the option.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act 1900.

Made and subscribed at _____ in the State of New South Wales
on _____ in the presence of—

Signature of witness: _____ Signature of lessor: _____

Full name of witness: _____

Address of witness: _____

Qualification of witness: *[tick one]*

- Justice of the Peace
- Practising Solicitor
- Other qualified witness *[specify]* _____

* As the Land and Property Management Authority may not be able to provide the services of a justice of the peace or other qualified witness, the statutory declaration should be signed and witnessed prior to lodgment.

Item 15:
(Number of Cars)

Item 16:
(Fee per annum per car)

#[#] per month

.

Item 17:
(Special Conditions)

1

[SAMPLE REFERENCE SCHEDULE]

REFERENCE SCHEDULE

- Item 1:
(Tenant) ABC Pty Limited
Suite 2.01, 123 Elizabeth Street
Sydney NSW 2000

OR consider using their registered address on the company search.
- Item 2:
(Guarantor) Catherine Louise Hallgath
123 Debtor Street
Sydney NSW 2000
- Item 3:
(Building) (a) Name of Building: Business Central
123 Elizabeth Street
Sydney NSW 2000
(b) Land: Folio identifier 1/234567
- Item 4:
(Premises) Suite 2.01
- Item 5:
(Term) 5 years
- Item 6:
(Rent) \$100,000 (subject to survey) (?)
- Item 7:
(Rent Review) (a) Percentage Increase
(i) Each anniversary of the Start Date
(ii) 4%
(b) CPI Review
Not applicable
(c) Market Review
Not applicable
- Item 8:
(Outgoings) 2.3%
OR:
The proportion (expressed as a percentage) obtained by dividing the Lettable Area of the Premises by the Lettable Area of the Building as at the Commencement Date.
- Item 9:
(Bank Guarantee) An amount equivalent to the sum of 3 months' contributions towards the Rent and Outgoings and an amount equivalent to the amount of GST payable by the Tenant under this Lease, if those amounts were paid directly to the Landlord.
- Item 10:
(Permitted Use) Commercial offices
- Item 11:
(Refurbishment date) On the third anniversary of the Start Date.
- Item 12:
(Public Liability insurance) \$20 million

Item 13: 3 years
(Option term)

Item 14: Attention: The Property Manager
(Landlord's address) 123 Pty Ltd
44 George Street
SYDNEY NSW 2000

Item 15: 1
(Number of Cars)

Item 16: \$180 per month
(Fee per annum per car) (Note: licence fee review provisions may be in the lease).

Item 17: 1 **Landlord's works**
(Special Conditions)

[EXAMPLE LEASE PROPOSAL]

[Landlord/Landlord's agent]

Dear Sir or Madam

123 Pty Ltd lease to ABC Pty Ltd
Premises: Suite 2.01, 123 Elizabeth Street, Sydney

I refer to our discussions.

I propose that ABC Pty Ltd lease the premises on the terms and conditions below.

1. Tenant ABC Pty Ltd
 2. Premises Suite 2.01, 123 Elizabeth Street, Sydney NSW
 3. Area Approximately 100 square metres.
 4. Rent \$1,000 per square metre plus GST
 5. Rent incentive 1 month's base rent free starting from the commencement date.
 6. Rent review 4% rent increase on each anniversary of the commencement date.
Market review on the exercise of the option term.
 7. Outgoings Tenant pays the tenant's share of the outgoings obtained by dividing the Lettable Area of the Premises by the Lettable Area of the Building as at the Commencement Date.
 8. Term 5 years commencing on 1 March 2011
 9. Option 3 years.
Notice to be provided not later than 3 months before lease expiry.
 10. Use Commercial offices.
 11. Insurance Public liability insurance \$20 million.
Plate glass insurance.
The Tenant will take out insurance in its own name only and note the interest of the Landlord. The Tenant must obtain the Landlord's approval
-

- of the insurer.
12. Access The Tenant will be given 7 day a week, 24 hour a day access to the building.
Building hours are: 7am - 6pm
 13. Air conditioning The Tenant pays for after hours air-conditioning. Current charges are \$20 per hour.
 14. Cleaning the premises The Landlord will arrange for the cleaning of the premises at the Tenant's cost.
 15. Make Good and refurbishment When the Tenant vacates the premises, the Tenant must remove all the fitout installed in the premises, reconfigure the services to an open plan layout, make good any damage caused by that removal and leave the premises in a clean condition and in good repair, subject to fair wear and tear. If the Tenant finds another party to take the premises with the existing fitout and that party is acceptable to the Landlord acting reasonably, then the Tenant is only required to remove its property, apart from the fitout and leave the premises in a clean condition.
 16. Landlord's works The Landlord must repaint and recarpet the premises using materials acceptable to the Landlord.
 17. Tenant's fitout The Tenant may fitout the premises to its own specification, subject to the consent of the Landlord.
 18. Car parking 1 carparking spaces
\$180 per month plus GST and the car parking levy.
The carparking licence fee will be reviewed in the same manner as the rent under the lease.
 19. Security 3 months' Rent and Outgoings + GST. The bank guarantee will be returned at when the Tenant has complied with all of its obligations under the lease.
 20. Legal costs Each party will pay its own legal costs. The Tenant will pay stamp duty and registration costs (if any).
 21. Assignment and subleasing The Tenant can assign all or part of the lease, subject to the consent of the Landlord.
The Tenant can sublease at the absolute discretion of the Landlord.
 22. Lease Access The Tenant will be entitled to access the premises 24 hours a day, seven days a week.
 23. Lease Documentation The lease will be based on the Landlord's standard lease containing the terms in this document and the amendments agreed between the parties.
 24. Deposit The Tenant will provide a deposit equal to one months gross rental plus GST following agreement of commercial terms, which is to be held in

trust and credited towards the first months rental upon lease execution.

If the Tenant withdraws from the lease negotiations the Landlord may deduct the Landlord's reasonable legal costs from the deposit and must return the balance of the deposit to the Tenant promptly.

25. GST Liability All dollar amounts stated in this proposal are exclusive of Goods and Services Tax (GST). The Landlord is entitled to pass on to the Tenant the obligation to pay GST imposed on any supply made in association with the rental and outgoings. For avoidance of doubt incentives are also quoted exclusive of GST, which will be the Landlord's responsibility.
26. No contract The parties will not be bound by this transaction until either both parties have signed the lease or the Tenant has signed the lease and taken possession of the premises, whichever is the earlier.
27. Confidentiality The parties will use their reasonable endeavours to keep this negotiation confidential. The parties may disclose the details of this negotiation to their professional advisors.

I look forward to receiving confirmation that this proposal is acceptable to the tenant.

Yours faithfully