**ANNEX 3 HEADS OF TERMS : TIR**

**DV PREFERRED VERSION: 2017**

**The estimated CMR stated below is subject to NHS affordability and approval and is valid for 6 months from (\*enter date of CMR notification letter to developer)**

|  |
| --- |
| **Landlord/Developer:**  [\* ]  **Tenant:**  Doctor [\* ] and partners (but limited to 4 signatories). *NB a separate Heads in respect of the terms agreed for other proposed tenancies within the Building excluding private sector elements.*  **Site:**  [\* ] and for identification only edged red on the attached plan.  **Building:**  A building to be constructed, and at completion to [\*comprise] [\*include] a primary care centre or centres to be constructed in accordance with NHS Guidance (as referred to below) and with external hard standing laid out to no less than [\* ] car parking spaces.  **Area:**  The intended size of the building is [ ] square metres based on Gross Internal Area (**GIA**) and [ ] square metres Net Internal Area (**NIA**) (ie the Target Area), in each case measured in accordance with RICS Guidance Note 60: The Valuation of Medical Centre and Surgery Premises]  **Demise:**  [\*The Site] [\*The Building but excluding the remainder of the Site] [\*The interior of the Building excluding structural parts] [\*The basement/ground/first/second floor of the Building excluding common and structural parts]. |

**NHS FUNDING**

References in this document to the “***Directions***” are to the **\***NHS (GMS - Premises Costs)(England) Directions 2004 \***OR** \*National Health Service, England The NHS (GMS - Premises Costs) Directions 2013, 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.

**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.

**THE AGREEMENT FOR LEASE**

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

***Plans and Specification***

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

***Variations***

Any post-Agreement variations required by the Tenant [\*or the Primary Care Organisation (PCO)] of the plans/specifications [for the area to be demised] to be subject to the approval of the Landlord. [\*Excepting structural alterations] Approval shall not be unreasonably withheld provided that if the Landlord is to incur additional costs the Tenant has agreed to reimburse those costs (unless under the terms of relevant NHS Funding the District Valuer has also agreed that reimbursement via an appropriate rental adjustment). If the variation results in a cost saving this saving will 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, to be subject to the approval of the Tenant [\*or PCO], 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 the DV 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.

***Tenant's Monitoring Surveyor***

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

***Practical Completion***

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

The Landlord to ensure that his building contract provides that Practical Completion will not be certified unless all works are completed as per the Plans and Specification referred to above. With particular regard to the following:

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

***Warranties***

The Developer is 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).

***Defects***

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

***Rent***

The initial rent will be:

**£[\* ]**

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

*It is understood that the initial rent agreed between the landlord and tenant as stated above has been projected to the date of occupation/practical completion and will not be increased until first rent review.*

The initial rent assumes a NIA (measured in accordance with RICS GN60) of [ \* ] square metres and at a rate of £[\* ] per square metre and no less than [ \* ] parking spaces at a rate of £\_\_\_per car parking space. Should the size of the Building or parking spaces exceed this assumption, to avoid doubt the initial rental will not be increased without the agreement of the tenant but may be reduced if the floor area and/ or number of car spaces is lower.

***Current Market Rent***

The initial Current Market Rent will be:

**£[\* ]**

*For the avoidance of doubt the initial CMR stated above has been assessed as at the date of occupation/practical completion and will not be increased until first rent review.*

***Rent and final measurement***

A final measurement will be undertaken by the District Valuer, once the works are sufficiently complete to enable such a measurement to be undertaken.

The initial annual rent to be inserted into the lease on completion will be determined in accordance with the following formula:

(NIA \*in square metres as determined by the District Valuer x £\* per sqm) + (\*number of car parking spaces x £\* per space) = £\*pa Rent

PROVIDED THAT if the NIA exceeds the Target Area then, for the purposes of this formula, the NIA will be deemed to be the Target Area.

If the NIA is smaller than the Target Area this area will be assumed at future rent reviews. If the NIA is greater than the Target Area the NIA will be assumed to be the Target Area at future rent reviews.

If there are fewer than \* car parking spaces, the rent will be reduced to reflect the reduction in the number of car spaces.

The initial rent, once calculated in accordance with the above formula, will not be increased until first rent review.

***Lease Completion***

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

***Rent Commencement Date and Access***

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

***Other Provisions***:

* VAT to be charged on rent subject to the Landlord providing copies of its option to tax the VAT together with an HM Customs & Excise acknowledgement.
* The Agreement to be personal to the Tenant and they may only assign the benefit with the consent of the Landlord except where the assignment is to (a) other NHS Doctors provided that the number of assignees may never fall below two individuals (and the level of rent reimbursement under the relevant NHS Funding is not prejudiced) or (b) a PCO or other NHS body with the benefit of the NHS (Residual Liabilities) Act 1996. Where either exception applies, it will be a condition precedent of assignment that written notice plus a direct covenant (in reasonable form) is given to the Landlord by the assignee.
* The development obligations within the Agreement are personal to the Landlord subject to a right of step in or enforcement by funders, and in any other case subject to the Tenant and the PCO (acting reasonably and without undue delay) not objecting to the transfer of obligations
* The Agreement to contain a long stop date of [ ] months to procure practical completion, (normally sufficient to allow two full build periods, and to provide for extension for reasons beyond the Landlord’s control).
* The Tenant will have rights to determine the Agreement (due to the Landlord’s material breach of obligations or insolvency) subject to the funders of the Landlord’s step in rights to build out the project.
* The Agreement for Lease will provide that in the event of a dispute, mediation provisions are available. The Agreement will, in addition, provide for either resolution by arbitration or by an expert determination should mediation not prove successful.

**COSTS**

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

**LEASE**

The lease will be within the protection of the Landlord & Tenant Act 1954.

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

***Term***

20/25 [[1]](#footnote-1)years commencing from the quarter day prior to Practical Completion.

***Rent***

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

***Demise***

The demised NIA floor area is [ ] sqm 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 and PCO, 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 [ ] 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 PCO, the actual number will be substituted and will be used for initial rent and future rent reviews.

***Rent Reviews [delete bullet points as appropriate]***

**The Tenant covenants that prior to referral to the NHS Funder 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 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.**

* Floor area and number of car spaces for rent review purposes is as stated above under the heading Demise
* Rent Reviews every [3][5] years.
* Rent at review to be determined by Market Rent [upwards only] [upwards or downwards, but never below the initial rent] [ either party to implement]
* In the assessment of Market Rental Value, the standard commercial assumptions and disregards are to be taken in to account, and the assumed term of the hypothetical lease is to be 15 years and the NIA is deemed to be a maximum of [---------].
* Where the parties fail to agree the Open Market Rent, it will be determined by an Independent Expert appointed by the President of the RICS. The Independent Expert is to be a Chartered Valuation Surveyor experienced in the valuation of medical premises and having full knowledge of reimbursement of rents to GPs.
* 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 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 or the NHS Litigation Authority as the amount to be reimbursed under the Directions adjusted to the terms of the lease.
* In the case of late rent review notices, the backdating any increase in rent and any interest charged thereon will be limited by wording to be provided in the rent review clause to the date on which the rent review notice was served.. [The rent review clause is to provide a clause allowing the Landlord to collect interest at base rate in respect of arrears of rent following the conclusion of a rent review] [The rent review clause is to contain a declaration requiring both parties to use all reasonable endeavours to comply with the procedure and timetable forming part of the rent review clause].

***Maintenance and decoration***

TENANT INTERNAL ONLY REPAIRING MODEL (TIR)

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

Tenant will repair and maintain plant and machinery (lifts, boilers etc) to agreed maintenance schedules of good practice.

**Premises rent** based on Tenant’s internal repairing terms. Cost of reinstatement Insurance included in the rent.

***Service Charge*** (if applicable)

Service Charge – only expected in shared buildings and to cover the cost of repairs and running costs related to internal common parts only and not the cost of external repairs and/ or the cost of reinstatement Insurance, both of which are included in the actual rent to be paid. If the service charge is to include any of the items included in the actual rent, the actual rent will need to be reduced to prevent the tenant paying twice for the same items/ services.

* + - 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.
    - Separate Service Charge to include cost of repair, decoration and cleaning to internal common areas only [and soft landscaping]
    - Separate Service Charge to include internal Facility Management costs
* At the tenant’s option the landlord will provide a call out service for internal repairs to the demise and will manage at least one other service for the tenant which is to be agreed between the parties.

***Insurance***

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

The tenant should be insured for the cost of temporary accommodation during the rebuilding of the existing premises.

***Alterations***

*Internal Alterations*

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

**External/Structural Alterations**

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

1. all necessary consents from competent authorities have been obtained;
2. warranties are provided to the Landlord;
3. no adverse effect on the relevant NHS Funding;
4. no adverse effect on the value of the Landlord’s reversion or the letting value of the demise;
5. Landlord’s approval of the plans;
6. Tenant’s covenant to reinstate the premises at the end of the term
7. such other reasonable requirements of the Landlord are complied with.

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

***User Clause***

As a Surgery, Clinic or Primary Health Care Centre for the provision of Medical Services under the NHS, other ancillary Primary, Community Health and Social Care purposes and any other primary and community healthcare purpose within the meaning of Use Class D1 [\*and (ONLY IF THE PRIMARY CARE ORGANISATION HAVE MADE AN INFORMED DECISION TO PERMIT THIS AFTER ADVICE REGARDING THE LIKELY COST IN TERMS OF AND INCREASED CMR) any purpose within the meaning of Use Class B1] of the Schedule to the Town & Country Planning (Use Classes) Order 1987 as subsequently amended.

***Assignment***

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

1. new or successor partners of the Tenant provided that the number of assignees may never fall below 2 individuals and the relevant NHS Funding is not adversely affected; or
2. Primary Care Organisation 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, an AGA will be entered into only 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:

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

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

1. The length of the Term will depend on the needs of the GPs, the requirements of the PCO, and the financial viability of the Scheme [↑](#footnote-ref-1)