



Meanwhile use sublease and guidance notes

(for lettings by an intermediary, e.g. a local authority or voluntary body)

Guidance notes: meanwhile use sublease

1 Background

This sublease has been prepared as part of the Communities and Local Government's Meanwhile Project (www.meanwhile.org.uk) to encourage the temporary occupation of empty town centre retail premises by non-commercial occupiers, who will be able to contribute to town centre vitality but who would otherwise be unable to afford normal commercial rents.

Communities and Local Government envisage that temporary occupiers might include voluntary or charitable groups, information centres, artists, musicians etc.

The purpose of this sublease is to provide an industry standard legal instrument to minimise administrative and legal costs for both landlords and tenants and to enable temporary occupation to take place as soon as possible, without the need for lengthy legal procedures. The parties are recommended to seek legal and professional advice in each case before signing.

There are various alternative provisions and great care should be taken in the completion of the form. If required, additional provisions may be added in Part 2. The impact of those provisions on the general terms in Part 1 should always be considered carefully.

While this model document has been provided as an aid to promote temporary occupation, careful consideration should always be given as to whether the documentation is suitable for particular circumstances. Communities and Local Government can accept no responsibility for any loss or damage arising from its use.

In this guidance note the term 'superior landlord' refers to the head landlord and the term 'intermediate landlord' refers to the intermediary organisation (e.g. local authority, charity organisation or town centre management partnership) which has taken a lease of the property.

2 Use of this lease

- (a) This sublease is intended for use where an intermediate landlord (e.g. a local authority, a charity organisation or a town centre management partnership) sublets a property, or part of a property, to a temporary occupier (tenant). It is intended that the intermediate landlord will have leased the property from the superior landlord under the 'intermediary meanwhile use lease'.
- (b) This sublease has been specifically drafted for non-commercial tenants and should not be used for commercial lettings. Accordingly, the Code for Leasing Business Premises in England and Wales 2007 and the RICS Service Charge Code for Business Premises in England and Wales 2007 do not apply to this sublease. Nevertheless, the general principle of 'no profit, no loss' in the RICS Code should apply to service charges under this sublease.
- (c) This sublease is intended to be used for short term lettings and intermediate landlords should exercise caution in using this sublease for any longer term arrangement.
- (d) It is not intended that the tenant should underlet the property but provisions for the tenant to share with a named entity/person have been included. Intermediate landlords will need to consider whether they wish to permit this, especially bearing in mind the prohibition in the 'intermediary meanwhile use lease' (clause 3.11.1 of that lease) on further sub-letting.

3 Service charge and insurance provisions

- (a) Given the intended short term nature of potential lettings, this sublease provides for a flat rate service charge and insurance payment. These charges should reflect those imposed by the superior landlord which, under the terms of the 'intermediary meanwhile use lease', should be on the basis of a fair and reasonable estimate of the cost attributable to the property. Where the superior landlord has agreed to waive any payment it would probably not be appropriate for any charge to be made.
- (b) The landlord's insurance is likely to be in respect of building insurance only. Temporary occupiers (tenants) entering into this sublease will need to obtain their own contents and (if necessary) public liability insurance and any other insurance which may be appropriate for their intended use of the property.
- (c) Intermediate landlords may wish for these charges to be payable to the intermediate landlord at least one week before the intermediate landlord has to pay the charges to the superior landlord to avoid cash flow issues for the intermediate landlord. The definition of 'payment period' (see 'particulars') will need to reflect this.

4 Damage deposit

Clause 3.6 of this sublease allows for a damage deposit to be paid by the tenant to the intermediate landlord as protection to the intermediate landlord for any damage caused to the property by the tenant. In deciding whether to request a damage deposit, intermediate landlords should have regard to all the circumstances of the letting, including the current condition of the property and to whether a damage deposit has been required from the superior landlord in the 'intermediary meanwhile use lease'.

5 Security of tenure under the Landlord and Tenant Act 1954

- (a) This sublease includes contracting out provisions in respect of the security of tenure provisions under the Landlord and Tenant Act 1954 (the "Act"). While a sublease not exceeding 6 months would not usually attract security of tenure for the tenant under the Act, there may be circumstances where this could arise. It is therefore recommended that the security of tenure provisions of the Act be excluded for all subleases.
- (b) For the benefit of temporary occupiers (tenants) reading these guidance notes this means that you will have no legal right to remain in the property at the end of the term and no legal right to apply to the intermediate landlord for a new sublease. The tenant might request a new sublease from the intermediate landlord but the intermediate landlord is not obliged to agree to this and it will be a matter for negotiation between the parties.

6 Superior landlord and other consents

- (a) The 'intermediary meanwhile use lease' permits intermediaries to sublet to temporary occupiers. No further consent is required from the superior landlord. However, notice of each sublease should be given to the superior landlord (please refer to clause 3.11.3 of the 'intermediary meanwhile use lease'). Under this sublease, the intention is that the tenant should not to sublet.
- (b) Intermediate landlords should disclose the identity of the superior landlord to the tenant, giving details of the superior landlord's name, company number (if applicable) and business address. Space is provided for this in the particulars.

7. Planning and use

It is always prudent for intermediate landlords and tenants to check whether planning permission for the proposed permitted use under the sublease is required and whether occupying the property for this use would affect the planning designation of the property in the future, especially where there is a change of use of the property. Other consents may also be required e.g. listed building consent, building regulation approval etc.

8. Landlord's costs

Clause 3.17 of the sublease places an obligation on the tenant to pay the intermediate landlord's costs. For the benefit of temporary occupiers (tenants) reading these guidance notes this means paying the intermediate landlord's costs for:

- (a) notices and/or court proceedings relating to the tenant breaking the terms of this sublease (e.g. not making payments, causing damage or nuisance); and
- (b) producing lists of any repairs needed to the property at the end of the sublease (to the extent that the tenant's obligations in the sublease require these: the sublease includes reference to a photographic schedule of condition and therefore the tenant's repair obligations would be limited to the condition set out in the schedule).

9. Marketing to commercial tenants

Under clause 8.6 (e) of the sublease the superior landlord is allowed to display a letting board on the property. Temporary occupiers occupying property under this sublease should be aware that the landlord/superior landlord may continue to market the property to commercial tenants. If the landlord/superior landlord finds a commercial tenant the landlord can only end the sublease on the end date stated under "Term" on page 1 of the sublease or by serving a break notice on the tenant in accordance with clause 7 of the sublease.

Meanwhile use sublease

Dated

(Intermediate Landlord)

(Tenant)

SUBLEASE
of

PARTICULARS

Date of Lease:

Intermediate Landlord:

of:

Tenant:

of:

Property:

shown edged red on the attached plan [being part of the Building known as _____]

Term: The Term starts on (and includes) _____ and ends on (and includes) _____ [This term should be at least one day shorter than the term of the 'Intermediary Meanwhile Use' lease.]

Tenant's Termination Notice [e.g. 10 working days] notice in writing. (Clause 7).

Intermediate Landlord's Termination Notice [e.g. 20 working days] notice in writing. (Clause 7).

Rent: The rent of one peppercorn.

Service Charge and Insurance Payment: [The sum of [_____] (as more particularly defined in Clause 1.1 of Part One of this Lease.) [Not applicable]

Payment Period The period in respect of which each payment of Service Charge and Insurance Payment is to be made, being [per week (commencing on a Monday)] [per calendar month (commencing on the first of each month)].

**Damage
Deposit**

[The sum of [_____] /] [Not applicable] (Clause 3.6.)

**Permitted
Use:**

Use as _____.

**Permitted
Hours:**

Means the hours of [_____] am] to [_____] pm] (inclusive) on [_____] to [_____] (inclusive).

**Permitted
Alterations:**

The right for the Tenant to:
[place on the exterior of the Property a sign stating the Tenant's name and business, subject to the intermediate landlord obtaining the superior landlord's approval of the sign's design, size and position.]
[erect internal counters, shelving, partitioning, display cases and other shopfittings and ancillary equipment (but not anything fixed to the structure of the Property) in the Property subject to such items being removed by the Tenant at the end of the Term.]

**Photographic
Schedule of
Condition**

The photos evidencing the condition of the Property annexed to this Lease.

**Current
Superior
Landlord**

[_____] /of _____

The Intermediate Landlord lets the Property to the Tenant for the Term at the Rent on the General Terms set out in Part One of this Lease as varied or supplemented by any Additional Terms set out in Part Two of this Lease.

Part One: General terms

1 Definitions and interpretation

1.1 Definitions

In this lease the following definitions apply:

Common parts means any amenities from time to time provided by the superior landlord for common use and intended to be available to the tenant.

Fair proportion means a fair and reasonable proportion appropriate to the property or its use, to be determined from time to time by the superior landlord's surveyor acting in good faith as an expert.

Insolvency event means any step taken by anyone towards insolvency, which includes any step towards liquidation, winding up, bankruptcy, administration, receivership, administrative receivership, a voluntary arrangement or an arrangement or compromise with creditors.

Insured risks means the risks against which the superior landlord from time to time insures.

Interest means interest both before and after any judgment and calculated daily from the due date to the date of payment at the rate of 4 per cent a year above the base rate from time to time of such UK clearing bank as the superior landlord may choose.

Property means each and every part of the property and all additions made in or to it at any time during the term and all superior landlord's fixtures and fittings, but does not include any part of the main structure, foundations, roof or exterior of the property (except for any shopfront or fascia of the property) or any service media which serve any adjacent property.

Service charge and insurance payment means the sum (if any) set out opposite this definition on page one of this lease being a contribution towards the superior landlord's estimated costs in respect of:

- (a) where relevant insuring the property against the insured risks, third party and public liability and loss of service charge.
 - (b) repairing, maintaining, decorating and cleaning all common parts, service media and structures (including roofs and foundations) used or enjoyed by the property in common with other property; and any service charges payable by the superior landlord for anything benefiting the property in common with other property (and which the superior
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landlord has estimated on a fair and reasonable basis in relation to this property).

Service media means pipes drains sewers cables ducts wires and other media for carrying water soil gas electricity telephone electrical impulses air smoke and fumes and other similar things

Superior landlord means any person(s) entitled to any estate or interest superior to the interest of the landlord in the property and includes the person (if any) stated as the current superior landlord in the particulars.

Working day means any day except Saturday, Sunday and public holidays in England.

1.2 Interpretation

- 1.2.1 Where a party to this lease includes two or more people, the covenants made by that party are made by those people jointly and severally.
 - 1.2.2 An obligation by the tenant not to do an act includes an obligation not to allow that act to be done by another person.
 - 1.2.3 References to the tenant's default and words to similar effect include the default of anyone at the property with the tenant's authority or under the tenant's control.
 - 1.2.4 Reference to the rights of the intermediate landlord include the same rights for anyone authorised by it.
 - 1.2.5 A reference to any statute includes all amendments or re-enactments of the statute and derivative regulations from time to time in force.
 - 1.2.6 Anything requiring the approval of the intermediate landlord is conditional also on the approval of any superior landlord and/or mortgagee.
 - 1.2.7 All rights reserved for the benefit of the intermediate landlord under this lease extend to any superior landlord.
 - 1.2.8 References to approval mean a prior approval in writing.
 - 1.2.9 General words are not limited because they are preceded or followed by particular words in the same category or covering the same topic.
 - 1.2.10 Headings to clauses and paragraphs are for convenience only and do not affect the meaning of this lease.
 - 1.2.11 The consideration for any supply made by the intermediate landlord or the superior landlord under this lease is exclusive of VAT.
 - 1.2.12 References to the particulars are reference to the particulars set out at the beginning of this document and the defined terms set out in the particulars shall have the meanings set out opposite them.
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- 1.2.13 Unless otherwise specified a reference to a numbered clause, schedule or paragraph is a reference to the relevant clause, schedule or paragraph in the same part of this lease as the reference.

2 Rents

The tenant will pay to the intermediate landlord during the term:

- (a) the rent (if so demanded); and
- (b) on demand as added rent (and recoverable as rent):
 - (i) the service charge and insurance payment; and
 - (ii) all other sums payable by the tenant under this lease.

3 Tenant's obligation

The tenant covenants with the intermediate landlord:

3.1 Rents and other amounts

- 3.1.1 To pay the service charge and insurance payment in advance on the first day of each payment period and proportionately for any period of less than a payment period.
- 3.1.2 To make the first payment of the service charge and insurance payment on the date of this lease (being a proportionate sum for the period from and including the first day of the term to the day before the first day of the next payment period following the date of this lease).
- 3.1.3 To pay the other amounts reserved as rent as mentioned in Clause 2.
- 3.1.4 Not to claim or exercise any right to legal or equitable set off or withhold payment of any amounts due to the intermediate landlord.
- 3.1.5 [If required by the intermediate landlord, to pay any service charge and insurance payment in cleared funds.]

3.2 Interest

- 3.2.1 To pay Interest on any sum payable to the intermediate landlord under this lease which the tenant fails to pay within 14 working days of the due date.
 - 3.2.2 For the purposes of Clause 3.2.1, a sum shall be treated as unpaid for any period during which there subsists a breach by the tenant of the terms of this lease and the intermediate landlord refuses to accept payment.
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3.3 VAT

- 3.3.1 To pay to the intermediate landlord any VAT chargeable on the consideration for any supply made by the intermediate landlord under this lease.
- 3.3.2 Where the tenant is to refund any payment made by the intermediate landlord, to pay to the intermediate landlord an amount equal to the VAT payable by the intermediate landlord, except to the extent the intermediate landlord can recover that VAT as input tax.

3.4 Outgoings

- 3.4.1 To pay all rates, taxes and other outgoings for the property, except any tax assessed on the intermediate landlord for its ownership of, rental income from or dealing with its interest in the property.
- 3.4.2 To pay all charges for electricity, water, telephone and other services for the property.
- 3.4.3 Where the property forms part of a larger property, and rates or other outgoings are payable for that property as a whole to pay a fair proportion of those rates or other outgoings.

3.5 Repair and decoration

- 3.5.1 To keep the property clean and tidy and free from pests and in no worse state and condition and decoration (fair wear and tear excepted) as of the date of this Lease as evidenced in the photographic schedule of condition.
- 3.5.2 Damage by the insured risks is excepted from Clause 3.5.1, save to the extent the insurance money is irrecoverable because of the tenant's default.

3.6 [Damage deposit

- 3.6.1 The tenant shall pay the damage deposit to the intermediate landlord on the date of this lease.
- 3.6.2 The intermediate landlord or the intermediate landlord's agent shall be entitled to hold the damage deposit as security against any loss to the intermediate landlord because of the tenant's default of its obligations under this lease.
- 3.6.3 After deduction from the damage deposit of any sums required to compensate the intermediate landlord for any such default by the tenant of its obligations under this lease (which deduction the tenant irrevocably and by way of security authorises the intermediate landlord or the intermediate landlord's agent to make), any balance remaining shall be payable without interest to the tenant within 14 working days of the end of the term.]

3.7 Alterations forbidden

Save for any permitted alternations:

- 3.7.1 Not to alter or add to the property.
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3.7.2 Not to place anything, for example, any signs, telecommunications equipment, lighting, canopy or awning outside, or on the exterior of, the property.

3.7.3 On demand to remove any unauthorised alterations or additions.

3.8 Default notices

To make good any failure to repair, clean or decorate the property of which the intermediate landlord has given written notice to the tenant, and to start the necessary work as soon as required by the intermediate landlord.

3.9 Use

3.9.1 Not to use the property other than for the permitted use.

3.9.2 Not to use the property outside the permitted hours.

3.9.3 [Not to use the property for commercial gain and/or to operate a profit making business on or from the property [provided that the tenant is permitted to sell items specific or ancillary to the permitted use].]

3.10 Nuisance

3.10.1 Not to do anything in or outside the property which might cause a nuisance, damage or annoyance to the intermediate landlord or others.

3.10.2 Not to do anything which might overload the floors of the property or any service media serving the property.

3.11 Transfer and subletting forbidden

Not to assign, sublet, hold on trust, charge or part with or share the possession or occupation of the whole or any part of the property [¹save that the tenant may share [part of] the property with [*specify name of entity*] provided that:

(a) no tenancy is created; and

(b) not less than 5 working days before such sharing begins the landlord receives written notice from the tenant of the identity and address of the person or entity sharing occupation]

3.12 Compliance with statutory requirements

3.12.1 To comply with the requirements of any statute affecting the property or its permitted use.

3.12.2 As soon as the tenant receives any notice affecting the property from an authority, to supply the intermediate landlord with a copy.

¹ Delete if not applicable

3.12.3 Immediately to give written notice to the intermediate landlord on the tenant becoming aware of any defect in the property.

3.13 Tenant's insurance duties

3.13.1 To comply with all requirements of the insurers and the fire authority about the property and its permitted use.

3.13.2 Not to do anything which could adversely affect any insurance policy relating to the property.

3.14 Planning

Not to apply for planning permission for the property.

3.15 End of the lease

At the end of the term to deliver all keys of the property and give up the property with vacant possession to the intermediate landlord and to remove from the property the permitted alterations (if any) and anything else installed or belonging to the tenant including any fittings and signs and to make good all damage caused to the property by their removal provided that the tenant shall not be obliged to return the property in any better state of repair and condition than as evidenced in the photographic schedule of condition.

3.16 Encroachments and rights

So far as possible, to preserve all rights enjoyed by the intermediate landlord and to help the intermediate landlord prevent anyone gaining any right over the property.

3.17 Intermediate landlord's costs

To pay on demand, on an indemnity basis, the intermediate landlord's costs for:

- (a) preparing and serving notices or proceedings under sections 146 or 147 of the Law of Property Act 1925; and
- (b) preparing and serving schedules of dilapidations.

3.18 Indemnity

To indemnify the intermediate landlord against all loss arising out of any failure by the tenant to comply with the terms of this lease.

3.19 Regulations

To comply with all reasonable regulations for the proper management of the property as are made by the intermediate landlord or the superior landlord and communicated to the tenant in writing.

3.20 Superior landlord

The tenant covenants with the superior landlord during the term to observe and perform all of the tenant's obligations under this lease.

4 Intermediate landlord's obligation

4.1 Quiet enjoyment

The intermediate landlord will allow the tenant peaceably to enjoy the property without any interruption by the intermediate landlord or any person claiming under the intermediate landlord.

5 Damage

If, because of damage by any of the insured risks, the whole or a substantial part of the property becomes unfit for use or inaccessible then:

- (a) (unless any insurance money has been refused because of the tenant's default) the whole or a fair proportion (depending on the extent of the damage) of the service charge and insurance payment payable under this lease shall be suspended until access and fitness for use are restored
- (b) the intermediate landlord or the tenant may end this lease by giving notice in writing to the other without prejudice to any existing liability, in which case any insurance money will belong to the intermediate landlord.

6 Forfeiture

- 6.1 The intermediate landlord may, by re-entering any part of the property, forfeit this lease and the term shall end if:
- (a) any rents are unpaid 14 working days after becoming payable (whether formally demanded or not)
 - (b) the tenant has not complied with any of the terms of this lease
 - (c) the tenant suffers any enforcement by seizure of assets; or
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(d) there occurs to the tenant (or where the tenant comprises two or more people there occurs to any of such people) an insolvency event

6.2 The forfeiture of this lease is without prejudice to any other rights or remedies of the intermediate landlord.

7 Break clause

7.1 This lease may be terminated [*at any time*] [*at any time after the expiry of the third month of the term*] (without prejudice to any existing liability):

(a) by the tenant giving to the intermediate landlord the tenant's termination notice; or

(b) by the intermediate landlord giving to the tenant the intermediate landlord's termination notice.

7.2 On the date of any termination of this lease under Clause 7.1, the intermediate landlord must repay to the tenant any service charge and insurance payment paid in advance in respect of a period falling after the date of termination.

8 Miscellaneous

8.1 No implied rights

Nothing in this lease impliedly grants to the tenant any rights other than those expressly granted by this lease.

8.2 Exclusion of warranty about use

Nothing in this lease implies a warranty that the property may be used for any purpose.

8.3 Representations

The tenant accepts that this lease has not been entered into in reliance on any representation made by, or for, the intermediate landlord.

8.4 Covenants about other property

Nothing in this lease gives the tenant the benefit of any agreement entered into by any person about any property not comprised in this lease.

8.5 Rights granted to the tenant

The tenant is granted the following rights over the property:

- (a) the right to use the common parts for all proper purposes to the extent necessary in connection with the proper use and enjoyment of the property;
- (b) the right to use any service media which are in other property belonging to the intermediate landlord and serve the property in common with other property; and
- (c) the right of support and shelter from any adjacent structures belonging to the intermediate landlord.

8.6 Rights reserved for the intermediate landlord

The intermediate landlord is to have the following rights over the property:

- (a) the right to use, and make connections to, the service media forming part of the property which serve, or are capable of serving, other property.
- (b) the right, at reasonable times and on reasonable notice (but in case of emergency at any time without notice) to enter the property for all proper purposes in connection with its ownership and management of the property; the landlord causing as little inconvenience as possible and making good without unreasonable delay any damage to the property caused by such entry.
- (c) the right to carry out works to other property, including oversailing the property with cranes and erecting scaffolding attached to the property even though this interferes with the amenities of the property.
- (d) all light, support and any other rights enjoyed by any other property.

8.7 Rights reserved for the superior landlord

The superior landlord shall have the right at any time to display a sale board and/or a letting board on the property.

8.8 Exclusion of statutory terms

8.8.1 The tenant confirms that:

- (a) before the date of this lease:
 - (i) the intermediate landlord served on the tenant a notice (the **Notice**) dated [**] about the tenancy created by this Lease in a form complying with the requirements of Schedule 1 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 (the **Order**);
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(ii) the tenant, or a person authorised by the tenant, in relation to the Notice made a statutory declaration (the **Declaration**) dated [^{**}] in a form complying with the requirements of Schedule 2 to the Order;

(b) where the Declaration was made by a person other than the tenant, the declarant was duly authorised by the tenant to make the Declaration on the tenant's behalf.

8.8.2 The intermediate landlord and the tenant confirm there is no agreement to which this lease gives effect.

8.8.3 The intermediate landlord and tenant agree to exclude the terms of sections 24 to 28 (inclusive) of the Landlord and Tenant Act 1954 in relation to the tenancy created by this lease.

8.9 Notices

Section 196 of the Law of Property Act 1925, extended as follows, applies to all notices and documents relating to this lease:

(a) where the expression "tenant" includes more than one person, service on any one of them shall be treated as service on them all.

(b) any notice or document sent by mail shall be treated as having been received on the second working day after the day of posting.

8.10 Third parties

The parties to this lease do not intend any term of this lease to be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party.

8.11 Tenant's belongings

The intermediate landlord is entitled to sell, as agent for the tenant, any belongings of the tenant left in the property for more than [five] working days after this lease has come to an end. If the tenant does not claim the net sale proceeds within six months after the lease has come to an end then the intermediate landlord may retain them.

8.12 [Tenant charity²

The property hereby let will, as a result of this lease be held by (or in trust for) [³], a non-exempt charity, and the restrictions on disposition imposed by Section 36 of the Charities Act 1993 will apply to the property (subject to Section 36(9)) of that Act]

² For use where the tenant is a charity, subject to confirmation by the charity

³ Insert name of tenant charity

Part two: additional terms

Executed by the parties as a deed.

This Lease creates legal rights and legal obligations. Do not sign it unless you have consulted a solicitor.

⁴**Signed** as a deed by _____)
the Intermediate Landlord and delivered in the
presence of: _____)

Intermediate Landlord

Signature of witness:

Name of witness:

Address:
.....
.....

⁵**Executed** as a deed by _____)
****** _____)
[Limited] [PLC] acting by its secretary
and a director or by two directors)

Director

Director/Secretary

⁴ For use where the intermediate landlord is an individual

⁵ For use where the intermediate landlord is a company

⁶**Signed** as a deed by)
the Tenant and delivered in the)
presence of:)

Tenant

Signature of witness:

Name of witness:

Address:

.....

.....

⁷**Executed** as a deed by)
**)

[Limited] [PLC] acting by its secretary
and a director or by two directors)

Director

⁶ For use where tenant is an individual

⁷ For use where tenant is a company
