1. SPECIMEN CLAUSE
2. SCHEDULE ⚫
3. Rent Reviews
4. **Definitions**

In this Schedule, the following expressions shall have the following meanings:

* 1. “**Open Market Rent**” means the yearly open market rent[[1]](#footnote-1) without any deductions whatsoever at which the Demised Premises[[2]](#footnote-2) might reasonably be expected to be let as a whole on the open market with vacant possession[[3]](#footnote-3) at the Relevant Review Date by a willing landlord to a willing tenant (which expression “willing tenant” shall for the avoidance of doubt include the Tenant)[[4]](#footnote-4) and without any premium or any other consideration for the grant of it for a term equal to the length of the Term remaining unexpired at the Relevant Review Date or a period of fifteen years[[5]](#footnote-5) from the Relevant Review Date whichever is the longer and otherwise on the same terms and conditions and subject to the same covenants and provisions[[6]](#footnote-6) contained in this Lease (other than the amount of the rent payable hereunder but including these provisions for the review of rent in the same form as this Lease at similar intervals):
     1. assuming:
        1. that the Demised Premises is at the Relevant Review Date fit, ready and available for immediate occupation by the willing tenant so that they are immediately capable of being used by the willing tenant for all purposes required by the willing tenant that would be permitted under this Lease[[7]](#footnote-7) and in calculating the Open Market Rent it shall be assumed that the willing tenant has enjoyed whatever rent concessions[[8]](#footnote-8) are being offered in the open market for fitting out purposes[[9]](#footnote-9) and that all Utilities and other facilities necessary for such occupation are connected to and immediately available for use at the Demised Premises;
        2. that no work has been carried out to the Demised Premises by the Tenant, any under-lessee or their respective predecessors in title during the Term, which has diminished the rental value of the Demised Premises;
        3. that if the Demised Premises or any part of it has been destroyed or damaged it has been fully rebuilt and reinstated[[10]](#footnote-10)[[11]](#endnote-1);
        4. that the Demised Premises is in a good state of repair and decorative condition;
        5. that all the covenants on the part of the Tenant[[12]](#footnote-11) contained in this Lease have been fully performed and observed;
        6. that the Demised Premises may be used for [any of the purposes permitted by this Lease or any licence granted pursuant to it][[13]](#footnote-12);
        7. that the Demised Premises comprise a floor area of ⚫ [net/gross external/internal area][[14]](#footnote-13) square [feet] [metres];
        8. that the Demised Premises includes the items listed in the Landlord’s Specification set out in Appendix ⚫ which were provided on the Term Commencement Date.
        9. ⚫ [[15]](#footnote-14).
     2. but disregarding:
        1. any effect on rent of the fact that the Tenant, any permitted under-lessee or their respective predecessors in title have been in occupation of the Demised Premises or any part of it;
        2. any goodwill attaching to the Demised Premises by reason of the business then carried on at the Demised Premises by the Tenant, any permitted under-lessee or their respective predecessors in title;
        3. any effect on the rental value of the Demised Premises attributable to the existence at the Relevant Review Date of any works executed by and at the expense of the Tenant (or any party lawfully occupying the Demised Premises under the Tenant) with the consent of all relevant persons where required in on or to the Demised Premises otherwise than in pursuance of an obligation under this Lease or any agreement therefor[[16]](#footnote-15);
        4. ⚫ [[17]](#footnote-16)
  2. the “**President**” means the President for the time being of the Society of Chartered Surveyors Ireland[[18]](#footnote-17) or any successor professional body and includes any duly appointed deputy of the President or any person authorised by the President to make appointments on his/her behalf.
  3. “**Review Dates**” means ⚫ in the year ⚫ and every fifth anniversary of that date during the Term and Relevant Review Date shall be construed accordingly;[[19]](#footnote-18)
  4. “**Rent Restrictions**” means restrictions imposed by any statute in force on a Review Date or on the date on which any revised rent is ascertained in accordance with this Schedule which operate to impose any limitation, whether in time or amount, on the collection, review or increase in the rent reserved by this Lease;
  5. the “**Surveyor**” means an independent chartered surveyor[[20]](#footnote-19) who is experienced in the valuation or leasing of property similar to the Demised Premises and is acquainted with the market in the area in which the Demised Premises are located[[21]](#footnote-20), appointed from time to time to determine the Open Market Rent pursuant to the provisions of this Schedule.

1. **Rent Review**

The rent reserved by this Lease shall be reviewed at each Review Date in accordance with the provisions of this Schedule and during each successive Review Period the rent shall equal the Open Market Rent on the Relevant Review Date, as agreed or determined pursuant to the provisions of this Schedule.

1. **Agreement or determination of the reviewed rent**
   * 1. The Open Market Rent at any Review Date may be agreed in writing at any time between the Landlord and the Tenant but if, for any reason, they have not so agreed by the Relevant Review Date then either the Landlord or the Tenant may by notice in writing to the other require the Open Market Rent to be determined by the Surveyor.
     2. The Surveyor shall, at the option of the Landlord, act either as an arbitrator in accordance with the Arbitration Act 2010 or as an expert, such option to be exercised by the Landlordeither by the Landlord giving written notice to the President at the time of the written application to the President; or if an application is made by the Tenant then by giving written notice to the Tenant and the Surveyor within seven days of the Landlord being notified of the Tenant’s application to the President, but if no written notice is given by the Landlord as aforesaid, then the Surveyor shall act as an arbitrator. If the Surveyor is to act as arbitrator, then this clause shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 2010 and to the jurisdiction of the courts of the State for the enforcement of any award of the said arbitrator

1. **Appointment of Surveyor**

If the parties have required the Open Market Rent to be determined by the Surveyor, then in default of agreement between the Landlord and the Tenant on the appointment of the Surveyor, the Surveyor shall be appointed by the President on the written application of either party to the President.

1. **Functions of the Surveyor**

The Surveyor shall:

* 1. determine the Open Market Rent in accordance with the terms of this Schedule.
  2. if acting as an expert, invite the Landlord and the Tenant to submit to the Surveyor within such time limits (not being less than fifteen (15) working days)[[22]](#footnote-21) as the Surveyor shall consider appropriate, a valuation accompanied if desired, by a statement of reasons and such representations as to the amount of the Open Market Rent with such supporting evidence as they may respectively wish;
  3. be entitled to have access to the Demised Premises for the purposes of inspecting and examining it as often as s/he may require; and
  4. within sixty (60) days of the appointment, or within such extended period as the Landlord and the Tenant shall jointly agree in writing, give to each of them written notice of the amount of the Open Market Rent as determined by the Surveyor.

1. **Fees of Surveyor**

The fees and expenses of the Surveyor (if acting as an expert) and the party responsible for paying them shall be determined by the Surveyor (but this shall not preclude the Surveyor from notifying both parties of the total fees and expenses notwithstanding the non-publication at that time of the decision) and, failing such determination of the party responsible for paying them, such fees and expenses of the Surveyor together with costs of the nomination shall be payable by the Landlord and the Tenant in equal shares who shall each bear their own costs, fees and expenses. Without prejudice to the foregoing, both the Landlord and the Tenant shall each be entitled to pay the entire fees and expenses due to the Surveyor and thereafter recover as a simple contract debt the amount (if any) due from the party who failed or refused to pay same.

1. **Appointment of new Surveyor**

If the Surveyor fails to give notice of the determination within the time aforesaid or if the Surveyor relinquishes the appointment or dies, is unwilling to act or becomes incapable of acting or if the Surveyor is removed from office by court order, or if, for any other reason, becomes unable or unsuited (whether because of bias or otherwise) to act, then either party may request the President to discharge the Surveyor (if necessary) and appoint another surveyor as substitute to act in the same capacity. The procedures set out in this Schedule shall apply as though the substitute were an appointment de novo, and such procedures may be repeated as many times as necessary.

1. **Interim payments pending determination**

If by the Relevant Review Date the amount of the reviewed rent has not been agreed or determined as aforesaid (the date of agreement or determination being the “Determination Date”), then:

* 1. in respect of the period (the “Interim Period”) beginning with the Relevant Review Date and ending on the day before the Gale Day following the Determination Date, the Tenant shall pay to the Landlord rent at the yearly rate payable immediately before the Relevant Review Date, and
  2. within seven (7) days of the Determination Date either:-
     1. the Tenant shall pay to the Landlord as arrears of rent:
        + 1. the amount (if any) by which the Open Market Rent reviewed in accordance with this Schedule exceeds the rent actually paid during the Interim Period (apportioned on a daily basis);
          2. interest on that amount at the Base Rate from the Relevant Review Date to the due date for payment of that amount; and thereafter;
          3. interest on that amount at the Prescribed Rate until the date of actual payment; or
     2. the Landlord shall pay to the Tenant:
        + 1. the amount (if any) by which the Open Market Rent revised in accordance with this Schedule is less than the rent actually paid during the Interim Period (apportioned on a daily basis);
          2. interest on that amount at the Base Rate from the Relevant Review Date to the due date for payment of that amount; and thereafter
          3. interest on that amount at the Prescribed Rate until the date of actual payment

less any sums due by the Tenant to the Landlord under the terms of this Lease at the Determination Date.

1. **Rent Restrictions**

On each and every occasion during the Term that Rent Restrictions shall be in force, then and in each and every case:

* 1. the operation of the provisions herein for review of the rent shall be postponed to take effect on the first date or dates thereafter upon which such operation may occur, and
  2. the collection of any increase or decrease in the rent shall be postponed to take effect on the first date or dates thereafter that such increase or decrease may be collected and/or retained in whole or in part and on as many occasions as shall be required to ensure the collection of the whole increase or decrease;

**AND** until the Rent Restrictions shall be relaxed either partially or wholly the rent reserved by this Lease (which if previously reviewed shall be the rent payable under this Lease immediately prior to the imposition of the Rent Restrictions) shall (subject always to any provision to the contrary appearing in the Rent Restrictions) be the rent from time to time payable hereunder.

1. **Memoranda of reviewed rent**
   1. As soon as the amount of any reviewed rent has been agreed or determined, a memorandum of such reviewed rent shall be prepared by the Landlord and shall be signed by or on behalf of the Landlord and the Tenant;
   2. The Tenant shall be responsible for and shall pay to the Landlord the stamp duty (if any) payable on such memoranda and any counterparts but the parties shall each bear their own costs in respect of their preparation and execution of such memoranda and any counterpart.
2. **Time not of the essence**

For the purpose of this Schedule, time shall not be of the essence.

1. If there is a reference to the market rent, then there is no need for the rent to be “full”, “fair”, “reasonable” or “best”. [↑](#footnote-ref-1)
2. Remember that this may require amendment if the Demised Premises are not retail, office or mainstream industrial. There may be no open market rent in Ireland for e.g. a power station. The more detailed the description of the Demised Premises the easier the review process, e.g. include maps, measurements etc. Note that when including measurements it is vital that they are correct and that the basis for measuring is accurate. [↑](#footnote-ref-2)
3. If the property is subject to valuable sub-lettings consider if this should be modified. [↑](#footnote-ref-3)
4. This is designed for a situation where the tenant may have a special interest - occupy adjoining units for example – and may be prepared to pay a rent higher than a notional tenant. This should be resisted if acting for the tenant. [↑](#footnote-ref-4)
5. 15 years is suggested as fair to both parties to a 20 year lease. [↑](#footnote-ref-5)
6. Beware when acting for a tenant that this could include break options and rent free periods that could increase the rent. [↑](#footnote-ref-6)
7. Depending on circumstances a tenant may wish to amend the assumption to read that the premises have been provided ready for fitting out by the tenant. [↑](#footnote-ref-7)
8. This clause is **not** designed to achieve a “headline rent”. If that is required see the words used in *Broadgate Square v Lehman Brothers, sub nom Co-Operative Wholesale Society –v- National Westminster Bank [1995] 1EGLR 97* the rent review clause of which provided for “the best yearly rent which would reasonably be expected to become payable in respect of the premises after the expiry of a rent free period of such length as would be negotiated in the open market between a willing landlord and a willing tenant upon letting of the premises in the open market at the relevant review date with vacant possession without fine or premium.” [↑](#footnote-ref-8)
9. This is designed to ensure that the tenant does not achieve a lower rent by virtue of the presumption of vacant possession. The tenant does not actually have to fit out twice and should not get the fit-out concession that a new tenant might. “Vacant Possession” in the definition of “Open Market Rent” does not mean an assumption that the Demised Premises either have or have not been fitted out for trading purposes. See footnote 7 above. [↑](#footnote-ref-9)
10. A tenant may want to add destroyed “by an Insured Risk” to this assumption. The lease will probably contain provisions which address damage by an uninsured risk but that is a whole separate topic. [↑](#footnote-ref-10)
11. [↑](#endnote-ref-1)
12. Some review clauses assume covenant compliance by both landlord and tenant. A tenant should resist this assumption on the part of the Landlord. Neither party should derive benefit from their covenant breach. [↑](#footnote-ref-11)
13. Exercise care with this if the user is particularly narrow e.g. “for the retail sale of fishing rods”. In that case, and if acting for the landlord, prefer “general retail purposes” or similar. If acting for the tenant the assumption should be the actual permitted use. If particular licences apply to the property (e.g. a pub), consider adding an assumption that all licences required for the permitted use are in place and if acting for the tenant, check they are! This is probably fair enough if the tenant covenants elsewhere in the Lease to obtain, comply with and renew all necessary licences. [↑](#footnote-ref-12)
14. Use the appropriate method of measurement to the use class, and consider using a definition in the definitions section of the Lease, for such method, for greater accuracy. [↑](#footnote-ref-13)
15. Consider any other assumptions that might be relevant. [↑](#footnote-ref-14)
16. The tenant should seek an additional disregard for works carried out in order to comply with statute – otherwise works carried out pursuant to that covenant that may have an adverse impact on review would be ignored on rent review and the landlord would benefit (unfairly). The wording “any works” and “any agreement therefor” would include any agreement for lease and it is preferable that any agreement for lease not be specifically referred to in the disregards. [↑](#footnote-ref-15)
17. Consider any other disregards that might be relevant. In some cases a tenant may want to describe its high value fit out in a lease appendix and provide for it to be disregarded. [↑](#footnote-ref-16)
18. Consider whether, given the location or nature of the premises, the president or chair of another professional body should appoint the Surveyor (or another relevant professional such as an auctioneer or valuer should act as the expert or arbitrator) such as IPAV etc. [↑](#footnote-ref-17)
19. This specimen provides for five yearly rent reviews. If a different rent review period is required this definition should be amended accordingly. [↑](#footnote-ref-18)
20. Consider depending on the location/nature of the premises; many auctioneers are not surveyors. See footnote 17 above. [↑](#footnote-ref-19)
21. Review this if the property is not of a common type so that such a surveyor could be hard to find e.g. a rural location may have a limited number of local chartered surveyors/auctioneers. [↑](#footnote-ref-20)
22. The Surveyor should be entitled to invite submissions up to the date of his determination and accordingly it would be inappropriate to impose any sort of maximum time limit. The reference to 15 working days is to allow the landlord and the tenant time to prepare their submissions. [↑](#footnote-ref-21)