

**CITY OF LONDON LAW SOCIETY LAND LAW COMMITTEE SUGGESTED SERVICE CHARGE  
PROVISIONS FOR A SHOPPING CENTRE**

**INTRODUCTORY NOTES**

The following service charge provisions produced by the City of London Law Society Land Law committee ("Committee") have been drafted for a lease of a shopping centre, although they may readily be adapted for any lease of commercial premises. The Committee has also produced a separate set of service charge provisions for an office building, which can be found on the web page for the Committee and a link to which follows:

[Precedent Documents](#) (see Land Law).

While the following provisions are detailed, users should not feel constrained to use the entire set of provisions. Users may choose to incorporate part of these provisions to supplement their own lease provisions (ensuring consistency between the provisions).

The draftspeople have been keen to achieve a balanced draft inspired by and reflecting many elements of the RICS Professional Standard on Service Charges in Commercial Property 2<sup>nd</sup> Edition 2025 ("the RICS Standard"), a link to which follows:

<https://www.rics.org/profession-standards/rics-standards-and-guidance/sector-standards/real-estate-standards/service-charges-in-commercial-property>

For example, many of the tenant's protection provisions reflect the RICS Standard.

The draft envisages that the service charge provisions will be contained in a schedule to the lease. That being the case, there will need to be an obligation on the Landlord and Tenant in the main body of the lease to observe and perform their respective obligations and the conditions in the schedules to the lease.

The service charge provisions include a number of definitions, some of which may need to be included in the main definitions clause in the lease if used elsewhere in the lease. Ensure the capitalised terms in the provisions are consistent with the other capitalised terms/definitions in the lease.

Instructions will need to be taken on the specific services to be provided - for example, is there a car park, to which the service charge provisions will extend? There may also be a need to include an "estate charge" (covering the provision of services on the estate) as well as the service charge for the building or centre itself. Consideration should also be given to the length of the term of the lease to be granted, as it may be appropriate in the case of a short term to limit the tenant's obligations, whether through the exclusion of particular heads of expenditure or by agreeing an overall cap on the tenant's contribution.

The RICS Standard uses the expression "hard" and "soft" to describe certain services. "Hard" services include mechanical and electrical services, lifts and escalators, suspended access equipment (that is, equipment used to provide access to the exterior of structures for activities

such as painting and cleaning) and fabric repairs and maintenance (including repair of structure and common parts and redecorations). "Soft" services include security, cleaning and environmental (including refuse collections and landscaping) and marketing and promotions. While this draft does not refer to services as "hard" or "soft" (instead preferring more specific headings), users of these provisions should feel free to use those expressions and may also consider utilising in the lease drafting the "standard industry cost classifications". Please see Appendix A, Section 2 of the RICS Standard for further information on the cost classifications.

While the provisions include detailed treatment of sinking and/or reserve funds (paragraph 11), consideration should also be given to including a depreciation charge as an alternative, further details of which can be found in Section 4.7 of the RICS Standard.

The RICS Standard encourages alternative dispute resolution ("ADR") as a means of resolving service charge disputes. While these provisions provide for determination by an independent expert (see paragraph 4.5.2), the parties should consider including an agreement by the landlord and the tenant to attempt to settle the dispute by mediation. The following links to the RICS's dispute resolution standards providing some useful background information:

<https://www.rics.org/profession-standards/rics-standards-and-guidance/sector-standards/dispute-resolution-standards>

These provisions have not been drafted to include reference to the Building Safety Act 2022 (the "BSA"), and should not be used for residential premises. BSA implications should be carefully considered if these provisions are used for mixed-use premises.

We are interested in any comments you may have on the provisions and please do email the City of London Law Society at [enquiries@clls.org](mailto:enquiries@clls.org) to provide your feedback.

March 2026

## SCHEDULE

### PART A

#### SERVICE CHARGE PROVISIONS<sup>1</sup>

##### 1. DEFINITIONS

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

**"Base Rate Interest"** the annual interest rate equal to the base rate of [ ] Bank plc (or, if that rate ceases to be published, such other comparable rate of interest as the Landlord shall reasonably specify);

**["Car Park"]** that/those part(s) of the Centre shown edged in [ ] on the plan(s) numbered [ ] attached to this Lease including any ramps;<sup>2</sup>

**"Centre"** the land and all buildings, fixtures and other structures from time to time on the land and all appurtenances of the land, which land is known as [ ] shown edged [ ] on the plan numbered [ ] annexed to this Lease and any extensions, alterations or additions from time to time made to it (but excluding all tenants' and trade fixtures) and any references in this Schedule to Centre include, where the context allows, each and every part of it;

**"Centre Opening Hours"** the period commencing one hour before and ending one hour after the Permitted Hours;

**"Common Media"** all Conducting Media within or serving the Centre, save those which serve individual Lettable Areas exclusively;

**"Common Parts"** all parts of the Centre which are available or provided by the Landlord for the general use or enjoyment in common by the Landlord and the tenants or occupiers of or visitors to the Centre (including forecourts, pathways, accessways, entrances, corridors, malls, lobbies, stairways, lifts, escalators, passages, turntables, courtyards, atria, light wells, pavement lights, external pavements, [[ the Car Park]<sup>3</sup>, service areas, toilets, bin stores or other refuse facilities and fire escapes);

**"Conducting Media"** pipes, wires, cables, sewers, drains, watercourses, trunking, ducts, flues, gutters, gullies, channels, conduits and other media;

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<sup>1</sup> Ensure the reddendum includes an obligation on the tenant to pay the service charge in accordance with this schedule.

<sup>2</sup> The treatment of car parks used by shoppers will need to be considered. Consider whether the Car Park is a Common Part or a Lettable Area or special case. A decision will need to be made as to whether the income from the car park will be credited to the service charge account or retained for the landlord's benefit. The RICS Standard calls for transparency. If the Landlord is to retain the income, this draft provides for the costs of the maintenance, repair and management of the car park to be excluded from Landlord's Costs (see definition of Excluded Costs). If income is to be set off against Landlord's Costs, the tenants will share the costs of servicing the car park as part of Landlord's Costs. There may be special circumstances that call for a partial credit of car park income that will need alternative drafting.

<sup>3</sup> See footnote 2 and paragraph 8.4.4.

**“Due Proportion”** has the meaning given to it in paragraph 2.3;

**[“Excluded Costs”** the costs incurred by the Landlord in the maintenance, repair and management of the [Car Park]<sup>4</sup>]

**"Group Company"** any company which is for the time being a member of the same group of companies as the Landlord and "group of companies" has the meaning in section 42(1) of the Landlord and Tenant Act 1954;

**"Insured Risks"** (subject to such exclusions and limitations as may be imposed from time to time by the insurer) fire, lightning, explosion, aircraft and articles dropped from them, riot, civil commotion, terrorism, malicious damage, storm, tempest, flood, earthquake, bursting or overflowing of water tanks, apparatus and pipes, impact by any vehicle and such other risks as the Landlord may reasonably consider necessary to insure;<sup>5</sup>

**"Landlord's Costs"** the costs and expenses incurred by the Landlord of and incidental to the provision of the Services in or with respect to the Service Charge Period or attributed to it in accordance with this Schedule [but Landlord's Costs do not include the Excluded Costs];

**"Landlord's Surveyor"** a surveyor or chartered member of a firm of surveyors who shall be a member of the Royal Institution of Chartered Surveyors or other suitably experienced person and such person may be a person employed by the Landlord or a company which is a Group Company;

**"Lettable Areas"** the areas in the Centre from time to time let or designed and intended for letting by the Landlord to one or more tenants;<sup>6</sup>

**"Management Premises"** all administrative, security and control offices and centres and stores (if any) made available by the Landlord for the purpose of managing the Centre and providing the Services, together with any accommodation provided by the Landlord or made available at the Landlord's expense for a building or facilities manager or any other person employed by it for purposes connected with the Centre;

**"Net Internal Area"** net internal floor area measured in accordance with the current edition of the *RICS Code of Measuring Practice*;

**"Outgoings"** all monetary obligations of any kind (whether parliamentary, parochial or otherwise) which are now or may at any time be assessed charged or imposed on property or on the owner or occupier of property;

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<sup>4</sup> See footnote 2. Thought needs to be given as to the precise extent of this exclusion (precisely which costs relating to the Car Park are to be excluded). If there are any other areas in respect of which certain service costs are not to form part of Landlord's Costs, this definition should be amended appropriately.

<sup>5</sup> See clause 10.2 and ensure that this definition is consistent with that used in the Lease.

<sup>6</sup> Consider whether substations, transformer chambers etc are to be expressly excluded from Lettable Areas.

**"Permitted Hours"** the hours of [ ] to [ ] on every day and until [ ] on [late night shopping] except for Sundays and Bank Holidays, provided that any Sunday or Bank Holiday may be included or such hours may be reasonably varied by notice in writing from the Landlord to the Tenant;

**"Premises"** the premises (forming part of the Centre) described in Schedule [ ] and each and every part of them<sup>7</sup>;

**"Retained Parts"** all parts of the Centre other than the Lettable Areas

**"RICS Standard"** means the RICS Professional Standard on Service Charges in Commercial Property, 2<sup>nd</sup> Edition 2025, as amended from time to time;<sup>8</sup>

**"Service Charge"** has the meaning given to it in paragraph 2.2;

**"Service Charge Period"** the period of 12 months from [ ] to [ ] in each year (or such other period of 12 months or more or less than 12 months as the Landlord may reasonably determine);

**"Service Charge Statement"** the year-end accounts referred to in paragraph 4.1;

**"Services"** the services and heads of charge itemised in Parts B and C of this Schedule.

## 2. TENANT'S LIABILITY TO PAY SERVICE CHARGE

2.1 The Tenant shall pay to the Landlord the Service Charge.

2.2 The Service Charge is a Due Proportion of the Landlord's Costs for a Service Charge Period attributable to the Premises in accordance with paragraph 2.3.

2.3 "Due Proportion", in relation to a unit of accommodation forming part of the Lettable Areas (including the Premises), is such proportion of the Landlord's Costs as the Landlord reasonably deems fair and attributable to that unit of accommodation, but without affecting the general operation of the Landlord's discretion, and

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<sup>7</sup> "Premises" will be defined elsewhere in the lease and so will not need to be defined in the service charge provisions. A definition is incorporated here for ease of reference.

<sup>8</sup> The following links to the RICS Standard: <https://www.rics.org/profession-standards/rics-standards-and-guidance/sector-standards/real-estate-standards/service-charges-in-commercial-property>

- 2.3.1 subject to clause 2.4, the proportion shall be calculated primarily on a comparison for the time being of the Net Internal Area<sup>9</sup> of the relevant part of the Lettable Areas with the aggregate Net Internal Area of all the Lettable Areas<sup>10</sup>; but
- 2.3.2 [the proportion shall be adjusted in accordance with the weighting principles (referred to in this Schedule as the "weighting principles") set out in Part D of this Schedule; and]<sup>11</sup>
- 2.3.3 if the Landlord properly considers that such comparison is inappropriate having regard to the nature of the expenditure (or item of expenditure) incurred or the premises in or upon the Centre which benefit from it or otherwise, the Landlord shall be at liberty in its discretion to adopt such other method of calculation of the proportion of such expenditure to be attributed to any relevant part of the Lettable Areas as shall be fair and reasonable in the circumstances, and in the exercise of the discretion the Landlord may if it is appropriate:
- 2.3.3.1 attribute the whole of such expenditure to any part of the Lettable Areas [or adjust the weighting principles in their application to an item of expenditure]; and
- 2.3.3.2 make special attributions of expenditure in the case of Sunday or other extended trading where only some traders in the Centre elect so to trade throughout the year, at certain times in the year, during Bank Holidays or outside normal trading hours;
- and in exercising its discretion the Landlord shall have regard to the interests of the tenants and occupiers from time to time at the Centre as a class;
- 2.4 [If the Due Proportion is not calculated on the basis of Net Internal Area, it shall be calculated on a basis that is reasonably determined and notified to the Tenant from time to time.]
- 2.5 The Landlord's Costs, the Service Charge and the provision of the Services shall be calculated and dealt with in accordance with the provisions of this Schedule.
- 2.6 [The [sinking and] reserve fund(s) shall be dealt with in accordance with paragraph 11.]

### 3. **ADVANCE PAYMENTS ON PRELIMINARY BASIS**

- 3.1 The Service Charge shall be discharged by means of advance payments to be made on each of the usual quarter days<sup>12</sup> in every year and also by such additional payments as may be required under paragraphs 4 and 5, the first advance payment in respect of the period

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<sup>9</sup> "Net internal area" is used in relation to offices and shops; "gross internal area" and "gross external area" both apply to industrial and warehouses (including ancillary offices). The RICS Code of Measuring Practice, currently in its 6th edition, contains detailed definitions of those terms.

<sup>10</sup> Floor area is probably the most common basis of service charge apportionment between tenants, but other bases may be used (see section 4.2 of the RICS Standard for further information).

<sup>11</sup> Landlords may not choose to include a "weighting schedule", which is usually found in a shopping centre context.

<sup>12</sup> Ensure consistency with any definition of Quarter Days in the rest of the lease. Also amend if different dates are designated for payment of the service charge.

commencing on [[ ] 20[ ]/[the grant of this Lease]] and expiring on the day preceding the following quarter day to be made on [the grant of this Lease].

- 3.2 The amount of the advance payments shall be such sums as the Landlord may reasonably determine as likely to be equal in the aggregate to the Service Charge for the relevant Service Charge Period.
- 3.3 The Landlord shall endeavour at least one month before the relevant Service Charge Period both to provide the Tenant with a budget of likely service charge expenditure and appropriate explanatory commentary, and to notify the Tenant of the advance payment determination in accordance with paragraph 3.2.<sup>13</sup>
- 3.4 The Landlord shall, so far as is reasonably practicable to do so, endeavour to procure that the form and content of the budget referred to in paragraph 3.3 reflects the principles of best practice guidance contained in the RICS Standard.<sup>14</sup>
- 3.5 Until the Landlord gives notification of the advance payment determination for the relevant Service Charge Period, the Tenant shall pay on account of each advance payment a sum equal to the amount of the last estimated quarterly advance payment in the previous Service Charge Period<sup>15</sup>, and within one month after the date of notification of the advance payment determination the Tenant shall pay the Landlord the amount of any shortfall in the relevant advance payments already made for the current Service Charge Period<sup>16</sup>.
- 3.6 The Service Charge shall be deemed to accrue on a day-to-day basis in order to ascertain yearly rates and for the administrative purposes of apportionment in relation to periods other than one year, but not for any other purpose.
- 3.7 Where part only of a Service Charge Period falls within the Term, the Tenant shall be liable for a proportionate part of the Service Charge for that period based on the number of days of that period falling within the Term.

#### 4. **LANDLORD'S COSTS, YEAR-END ACCOUNTS AND ADJUSTMENTS**

- 4.1 The Landlord shall, as soon as may be practicable and, in any event, shall endeavour to, within four months,<sup>17</sup> after the end of each Service Charge Period, submit to the Tenant year-end accounts duly certified by the Landlord, the Landlord's Surveyor or the Landlord's managing

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<sup>13</sup> While this paragraph accords with a specific recommendation of the RICS Standard (see section 4.5), some landlords may regard the time constraint in the paragraph, as impractical.

<sup>14</sup> See section 4.5 of the RICS Standard.

<sup>15</sup> If the Landlord is unlikely to have such an estimate, the lease should contain a specified amount for the initial advance payment to avoid any uncertainty.

<sup>16</sup> A Tenant may seek to amend this to provide that any balance is paid by equal instalments on the remaining quarter days during the current service charge period.

<sup>17</sup> This four-month time limit is consistent with the RICS Standard (see section 4.3).

agent, reviewed by an independent accountant if the Landlord reasonably so decides<sup>18</sup>, giving a proper summary of the Landlord's Costs and the calculation of the Service Charge for the Service Charge Period just ended, together with accompanying details of the sums paid in advance by the Tenant and any balance due from or to the Tenant, in order that the Tenant may come to a reasonable understanding of the calculation of the Service Charge.

4.2 The Landlord shall, so far as is reasonably practicable to do so, endeavour to procure that the form and content of the Service Charge Statement reflect the principles of best practice guidance contained in the RICS Standard<sup>19</sup>.

4.3 In respect of any balance of Service Charge referred to in paragraph 4.1:

4.3.1 if the balance is due from the Tenant to the Landlord, the Tenant shall pay the balance to the Landlord within 14 days after the receipt of the Service Charge Statement by the Tenant;

4.3.2 if the balance is due from the Landlord to the Tenant, the balance shall be set off against the next advance payments of Service Charge due from the Tenant, or, if the Term<sup>20</sup> has ended, shall be paid by the Landlord to the Tenant within 14 days after the submission of the Service Charge Statement to the Tenant.

4.4 The provisions of this paragraph 4 shall continue to apply notwithstanding the termination of this Lease in order to determine the liability (if any) of the Landlord or the Tenant up to the termination of this Lease.

4.5 Within [four months]<sup>21</sup> after the submission of the Service Charge Statement to the Tenant, the Tenant may challenge the Service Charge Statement by giving to the Landlord notice to that effect, but only if it has first made payment of the undisputed amount of any Service Charge that the Service Charge Statement shows as due from the Tenant and, if so:

4.5.1 the Landlord shall deal with proper enquiries promptly and efficiently and the Landlord and the Tenant shall endeavour to resolve the relevant issue, but if they cannot do so;

4.5.2 the issue in dispute shall be referred to the determination of an independent expert<sup>22</sup>:

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<sup>18</sup> Auditing of the service charge statement should be carefully considered in view of the amount of due diligence that the auditor may potentially require in the light of modern auditing standards (see section 4.5.3.1 of the RICS Standard for further information). For that reason, paragraph 4.1 does not refer to the statement being audited by the Landlord's auditors.

<sup>19</sup> See sections 4.3 and 4.5 of the RICS Standard.

<sup>20</sup> Ensure the lease has a definition of "Term" and amend where appropriate.

<sup>21</sup> Section 4.6.5 of the RICS Standard states that the owner will allow occupiers a reasonable period (e.g. four months from issue), in which to raise enquiries in respect of the certified accounts/statement. Four months may be too long a period for some landlords.

<sup>22</sup> Ensure the expert determination provisions are consistent with any other such provisions in the lease. The parties should also consider including mediation provisions - the RICS intends that the RICS Standard provides access to ADR for parties involved in disputes about service charge. See section 4.6.6 of the RICS Standard.

4.5.2.1 to be appointed by the parties jointly, or if they cannot agree an appointment by the President (or other acting senior officer for the time being) of the Royal Institution of Chartered Surveyors on the request of either party;

4.5.2.2 who shall act as an expert and not as an arbitrator;

4.5.2.3 whose determination will be final and binding on the parties except in the case of manifest error;

4.5.2.4 whose fees and expenses (including the cost of his nomination) shall be borne as the expert determines (but in the absence of determination they shall be borne equally) and the Landlord and the Tenant shall each bear its own costs with respect to the determination, but either may pay the costs required to be borne by the other if they remain unpaid more than 21 days after becoming due and then recover these and any incidental expenses incurred from the party in default on demand; and

4.5.2.5 who, in the event of his refusing to act, becoming incapable of acting or dying, may be replaced by either party requiring the appointment of a replacement as provided in paragraph 4.5.2.1;

4.5.3 such adjustments to the Service Charge Statement as may be required to be made in consequence of the determination of the expert shall be made and any sum due to or payable by the Landlord shall promptly be paid or allowed as the case may be; and

4.5.4 Base Rate Interest<sup>23</sup> shall be paid or allowed in respect of the period during which the relevant amount has been underpaid or overpaid;

but, if not, the Tenant's right of challenge to that Service Charge Statement shall lapse.

4.6 The Tenant shall be entitled on reasonable request to:

4.6.1 inspect service charge documentation (including records and vouchers) of the Landlord at such location as the Landlord may reasonably appoint for the purpose during normal working hours on weekdays; and

4.6.2 take copies of them at the Tenant's expense.

## 5. **UNBUDGETED EXPENDITURE<sup>24</sup>**

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<sup>23</sup> Ensure this definition is consistent with other interest rate definitions in the lease.

<sup>24</sup> Section 4.7.4.6 of the RICS Standard considers the situation where no sinking fund or reserve fund has been put in place, but significant or extraordinary one-off expenditure is needed which would be an onerous burden for tenants. It suggests that a landlord might spread the costs over more than one service charge period (but within the lease term) as a concessionary arrangement with the tenant. This arrangement would be outside the provisions of the service charge and documented by way of a separate agreement that is personal to the current tenant.

- 5.1 If the Landlord is required in relation to any Service Charge Period to incur or actually incurs unbudgeted expenditure which forms part of the Landlord's Costs, the Landlord shall be entitled to recover from the Tenant the Due Proportion of the whole of that expenditure on the quarter day next following.
- 5.2 If funds collected by way of advance payments towards Landlord's Costs prove insufficient to meet an immediate liability (and there is no appropriate reserve fund available or which may be applied to meet the liability), and the insufficiency does not arise from any of the causes specified in paragraph 5.3, the Landlord shall be entitled to advance monies (or borrow monies for the purpose from reputable banks) at commercially competitive rates of interest, and the interest payable on the advance or the borrowing shall be recoverable as an item of the Landlord's Costs.
- 5.3 The causes mentioned in paragraph 5.2 are;
- 5.3.1 any Lettable Areas are or have been vacant or occupied by the Landlord;
- 5.3.2 there are shortfalls in the recovery of contributions from a tenant or other occupier of the Due Proportion of the Landlord's Costs attributable to any part of the Lettable Areas by reason of the tenant or occupier being in default or not being obliged to pay (whether as a result of a service charge cap, formal concession or otherwise).
- 5.4 The Landlord shall give notice to the Tenant as soon as reasonably possible after becoming aware of the need to incur unbudgeted expenditure.

## **6. ADVANCE PAYMENTS ACCOUNT**

- 6.1 This paragraph 6 applies to that part of the monies ("relevant monies") paid by the Tenant and other tenants and occupiers of the Centre in respect of Landlord's Costs, which has not yet been disbursed or appropriated in payment of the Landlord's Costs.
- 6.2 The Landlord shall keep (or procure that the Landlord's Surveyor or Landlord's managing agents shall keep) the relevant monies in a separate trust account until and to the extent that they may be required for disbursement or appropriation in payment of the Landlord's Costs.
- 6.3 Interest earned on such account (less any tax payable) shall be credited to the account at regular rests in each year.
- 6.4 Until and subject to actual disbursement or appropriation in accordance with this Schedule, the relevant monies shall be held by the Landlord on trust for the benefit of the owners, tenants and occupiers of the Centre as a class.

## **7. LANDLORD'S PROTECTION PROVISIONS**

The Tenant shall not be entitled to object to the Landlord's Costs (or any item comprised in them) or otherwise on any of the following grounds:

- 7.1 the inclusion in a subsequent Service Charge Period of any item of expenditure or liability omitted from the Landlord's Costs for any earlier Service Charge Period so long as the Landlord has acted in good faith;
- 7.2 an item of Landlord's Costs included at a proper cost might have been provided or performed at a lower cost;
- 7.3 disagreement with any estimate of future expenditure for which the Landlord requires to make provision, so long as the Landlord has acted reasonably and in good faith and in the absence of manifest error;
- 7.4 the manner in which the Landlord exercises its discretion in providing Services, so long as the Landlord acts in good faith and in accordance with the principles of good estate management;
- 7.5 the employment of managing agents to carry out and provide any of the Services on the Landlord's behalf;
- 7.6 the employment of a Group Company to carry out and provide any of the Services on the Landlord's behalf;
- 7.7 the benefit of a service provided by the Landlord will be enjoyed substantially at a time after the expiry of this Lease, if the service is provided by the Landlord in good faith and it is generally of benefit to the tenants and occupiers of the Centre as a class<sup>25</sup>.

## 8. TENANT'S PROTECTION PROVISIONS

- 8.1 The following liabilities and expenses are to be excluded from the items comprising the Landlord's Costs:
  - 8.1.1 initial costs (including leasing, lease-hire purchase or other similar financing arrangement of equipment<sup>26</sup>) incurred in relation to the original design and construction of the Centre and the original plant and equipment serving or used in the Centre;
  - 8.1.2 costs attributable to the initial establishment of services to the Centre that are reasonably to be considered part of the original development cost of the Centre;
  - 8.1.3 costs incurred in relation to the initial promotional launch of the Centre;
  - 8.1.4 costs incurred in relation to the redevelopment of the Centre, but not so as to exclude costs under paragraph 8.2;

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<sup>25</sup> This provision may be helpful for a landlord in seeking to rebut a tenant's claim (at the end of its lease) to a refund of unspent service charge contributions towards future expenditure- see *Brown's Operating System Services Limited v Southwark Roman Catholic Diocesan Corporation* [2007] EWCA Civ 164.

<sup>26</sup> This reference to "leasing, lease-hire purchase or other similar financing arrangement of equipment" appears in the RICS Standard, but may need refinement.

- 8.1.5 costs incurred in relation to the marketing of empty Lettable Areas;
  - 8.1.6 costs of collecting and reviewing the rent firstly reserved in leases of Lettable Areas;
  - 8.1.7 costs of administering applications for consent to assign, sublet or alter by tenants or occupiers of the Centre;
  - 8.1.8 costs directly attributable to the breach, non-observance or non-performance by the Landlord of its obligations in paragraph 10, but such costs are to be excluded only to the extent that they would not have been incurred in the absence of the breach, non-observance or non-performance; [and]
  - 8.1.9 any liability or expense for which the Tenant or other tenants or occupiers of the Centre may individually be responsible under the terms of their tenancy (or other arrangement by which they use or occupy the Centre). [and
  - 8.1.10 the Excluded Costs.]
- 8.2 The costs of replacement and renewal may only be included as items comprising the Landlord's Costs if:
- 8.2.1 the relevant items being replaced or renewed are beyond, or are shortly to become beyond, economic repair, or efficient or economic operation; or
  - 8.2.2 replacement or renewal of such items can be effected at a relatively lower cost compared with the much greater cost that would probably be occasioned by material postponement of the replacement or renewal; or
  - 8.2.3 replacement or renewal of such items is a requirement of any legislation or public or competent authority, or of the insurers.
- 8.3 The Service Charge may not be increased or altered by reason only that, at any relevant time, any Lettable Areas may be vacant or occupied by the Landlord, or that any tenant or other occupier of another part of the Centre may default in payment of, or not be obliged to pay (whether as a result of a service charge cap, formal concession or otherwise), its Due Proportion of the Landlord's Costs, but, subject to this, it is the intention that the Landlord should recover the whole of the Landlord's Costs from the Tenant and the other tenants and occupiers of the Centre.
- 8.4 The amount of the Landlord's Costs for a Service Charge Period shall be reduced in any of the following circumstances:
- 8.4.1 if the Landlord recovers monies, in the exercise of any claim or proceedings referred to in paragraph 26.2, representing expenditure which has been or would otherwise fall to be included in the Landlord's Costs, the Landlord shall set off or credit such monies (less any tax payable) against the Landlord's Costs accordingly.
  - 8.4.2 where the Landlord recovers interest for late payment in enforcement of the obligation of any tenant or other occupier of any part of the Centre to pay its Due Proportion of

the Landlord's Costs, the Landlord shall set off or credit the interest (or a due proportion) (less any tax payable) against the Landlord's Costs, unless and to the extent that the Landlord has funded the liability itself.

8.4.3 [where barrows and kiosks situate from time to time within the Common Parts derive a benefit from the Services, the Landlord shall set off or credit the Landlord's Costs with an amount which reflects in the Landlord's reasonable determination a notional proportionate charge for the benefit so derived, but the income otherwise derived from them shall belong to the Landlord.<sup>27</sup>]

8.4.4 [the Landlord shall credit the Landlord's Costs with the net income (less any tax payable) received by the Landlord from the use of the Car Park]<sup>28</sup>

8.5 The Landlord shall bear out of its own monies such proportion of marketing and promotional expenditure incurred as the Landlord reasonably deems fair, and that proportion shall be set out in the Service Charge Statement <sup>29</sup>.

## 9. MANAGEMENT CHARGES

The Landlord shall be entitled to include in the Landlord's Costs:

9.1 the reasonable cost of employing managing agents for the carrying out and provision of Services;

9.2 a reasonable fee for the carrying out and provision of Services, where the Services are not carried out or provided by managing agents; and

9.3 the reasonable cost of the accountants, auditors or surveyors for auditing, certifying or reviewing the Landlord's Costs, or providing other similar services in connection with the Landlord's Costs<sup>30</sup>.

## 10. THE LANDLORD'S PROVISION OF SERVICES

10.1 Subject to the following provisions of this paragraph 10, the Landlord:

10.1.1 shall provide the Services itemised in Part B of this Schedule; and

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<sup>27</sup> This treatment of barrows and kiosks is in accordance with the RICS Standard (see section 4.10.3 on "non-core income").

<sup>28</sup> This will be relevant where the Landlord wishes to charge the service charge account with the costs of maintenance repairs and management of the Car Park. In appropriate cases, part (rather than the whole) of the income might be credited. If this provision is included, it will be appropriate to delete provisions that exclude car park costs from Landlord's Costs.

<sup>29</sup> The RICS Standard provides that the funding of marketing and promotional activities is a shared cost between the Landlord and the tenants at the Centre (see section 4.10.1 on "Marketing and Promotions"). This paragraph enables the tenants to see that the Landlord is paying its due.

<sup>30</sup> Some landlords calculate the management charge as a percentage of the Landlord's Costs. The RICS Standard opposes such an approach as "a disincentive to the delivery of value for money" (see section 4.1.1.2).

- 10.1.2 may provide the Services itemised in Part C of this Schedule.
- 10.2 The Landlord shall not be liable to the Tenant for failure to provide any Services to the extent that the Landlord is prevented from doing so by an Insured Risk or other such peril, accident, strike, lockout of workmen or other cause beyond the reasonable control of the Landlord.
- 10.3 The Landlord shall not be liable to the Tenant for failure to provide any Services that it is obliged to do, unless caused by the Landlord's negligence or wilful default and the Landlord has had a reasonable time in which to remedy the failure.
- 10.4 The Landlord shall not be liable to the Tenant for any loss, damage or inconvenience which may be caused by reason of:
- 10.4.1 temporary interruption of Services during periods of inspection, maintenance, repair or renewal;
- 10.4.2 temporary interruption of Services during the course of building works; or
- 10.4.3 the breakdown, failure, stoppage, leaking, bursting or defect of any hot or cold water, sanitary, ventilation, extraction plant and machinery, or of soil, gas, water or electricity or other plant and machinery or of the Common Media or the Conducting Media in the Premises, the Centre or neighbouring or adjoining property;
- provided that the Landlord shall take all necessary steps to restore the Services or plant and machinery or media (where the Landlord is otherwise obliged to provide such Services under this Schedule) as soon as reasonably practicable.
- 10.5 The Landlord shall not be under any obligation to the Tenant to continue the provision of the Services specified in Part C of this Schedule and may in its absolute discretion vary, extend, alter or add to the Services in Parts B and C if the Landlord [reasonably] considers that by so doing the interests of the tenants and occupiers of the Centre as a class will be better served, the amenities in the Centre may be improved and/or the management of the Centre may be more efficiently conducted.
- 10.6 The Landlord may not be required by the Tenant to provide the Services referred to in paragraphs [14.1] (heating, air conditioning and ventilation and hot water) and [15.1] (lifts and escalators) outside Centre Opening Hours and it shall be in the discretion of the Landlord whether and how to do so.
11. **[SINKING AND] RESERVE FUNDS**<sup>31</sup>
- 11.1 With a view to securing so far as may reasonably be practicable that:
- 11.1.1 the Landlord's Costs should be progressive and cumulative rather than irregular; and

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<sup>31</sup> Sinking and reserve funds can be difficult to operate and are tax inefficient. Specialist tax advice should be obtained before setting up such funds. See section 4.7.4 of the RICS Standard for further information.

11.1.2 tenants for the time being of premises in the Centre should during the term of their respective tenancies bear a proper part of accumulating liabilities which accrue in the future;

the Landlord is entitled (but not bound) to include as an item of the Landlord's Costs for a Service Charge Period amounts which the Landlord reasonably determines to be appropriate to build up and maintain [a sinking fund and] a reserve fund in accordance with the principles of good estate management and the conditions in this paragraph 11.

11.2 [The following provisions of this paragraph 11.2 are to apply to a sinking fund established by the Landlord, but the Landlord is not obliged to establish a sinking fund for all or any category items:

11.2.1 Any sinking fund is to be established and maintained on normal commercial principles for the renewal and replacement in or at the Centre of lifts, escalators, air-conditioning and heating plant and equipment, fire-alarm and other security systems and the roof, each of which is to be treated as an individual category item.<sup>32</sup>

11.2.2 The following principles are to apply in respect of the sinking fund:

11.2.2.1 the sinking fund in respect of any one category item is to be kept differentiated from other category items and is to be allocated its own life-cycle as the Landlord reasonably determines appropriate having regard to the likely time for the eventual replacement of that item;

11.2.2.2 when establishing any sinking fund in respect of a category item the Landlord shall take into account the need for contributions to it to be consistent and evenly and fairly borne by all tenants who for the term of their respective tenancies during the life-cycle of the category item have the benefit of its use or enjoyment;

11.2.2.3 the amount of the replacement cost of a category item in due course is to be estimated by the Landlord on a reasonable basis having taken proper technical advice on the subject;

11.2.2.4 the calculation of the contributions to the sinking fund for each category item is to be made on an annual basis by apportionment according to time referable to the relevant life-cycle;

11.2.2.5 having established a sinking fund in respect of any category item, the Landlord shall maintain contributions to it consistently throughout its life-cycle and until its actual replacement; and

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<sup>32</sup> This needs to be determined by the Landlord and made transparent to the Tenants. There may also need to be separate sinking funds for items within individual category items.

11.2.2.6 each tenant is to be required to make the Due Proportion of the aggregate contribution to the sinking fund for all category items.

11.2.3 A surplus of contributions over the cost of replacement of a category item is to be carried over to the replacement cost of the next category item and appropriate adjustments made to the contributions to that category item; a deficit in the contributions in respect of the actual cost of replacement of a category item is to be made good, spread over the life-cycle of the next category item.<sup>33]</sup>

11.3 The following provisions of this paragraph 11.3 are to apply to a reserve fund established by the Landlord.

11.3.1 Any reserve fund is to be established and maintained on normal commercial principles to cover prospective and contingent costs of a regularly recurring nature in respect of any of the following:

11.3.1.1 repairs, decoration, and renewal (but not in respect of yearly maintenance or running repairs costs);

11.3.1.2 complying with legislation, by-laws and the regulations of all competent authorities; and

11.3.1.3 complying with the requirements of insurers;

in relation to the use, occupation and enjoyment of the Centre and which are incurred on a periodic-cycle basis [and are not category items to which paragraph 11.2 applies].

11.3.2 The periodic-cycle is to be determined by the Landlord on an estimate of likely expenditure over the ensuing [five] year period and updated at [two] yearly intervals.

11.3.3 Contributions required to be made by tenants for the time being are to be calculated on as even a progressive yearly basis as is reasonably practicable.

11.3.4 Having established a reserve fund in respect of a periodic cycle, the Landlord shall maintain contributions to it consistently throughout the periodic-cycle and until the actual expenditure of the reserve fund, or the relevant part of it, is incurred.

11.3.5 A surplus of contributions over the actual cost incurred at the end of a periodic-cycle is to be carried forward to the next periodic-cycle; a deficit in the contributions in respect of the actual cost incurred at the end of a periodic-cycle is to be carried forward and appropriate contributions to make good the deficit are to be spread over the next periodic-cycle.<sup>34</sup>

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<sup>33</sup> The Landlord may wish to consider a balancing charge in respect of a deficit for the Service Charge Period in which replacement takes place.

<sup>34</sup> See footnote 33.

- 11.3.6 The contributions within any reserve fund shall remain part of the Service Charge, and all payments made out of the fund shall be clearly communicated to the Tenant and included as part of the annual reconciliation of the Service Charge.
- 11.3.7 At the expiration or earlier determination of the Term, the Landlord shall refund to the tenant a Due Proportion of any surplus contributions within any reserve fund.<sup>35</sup>
- 11.4 The following conditions apply [both] to [a sinking fund and] a reserve fund established by the Landlord; [references to a "fund" are to be construed accordingly]:
- 11.4.1 once established in either case, a fund shall be maintained by the Landlord consistently and contributions to it by tenants for the time being are to be required for payment on a regular basis as part of the Service Charge;
- 11.4.2 the Landlord shall apply a regime in lettings of the Centre consistent with the provisions of this paragraph 11, but, in case of any departure from it, paragraph 11.4.4 is to apply;
- 11.4.3 a tenant is required to contribute to [a sinking fund and] a reserve fund, [as the case may be,] irrespective of whether the costs for which it/either is established are expended during the term of the tenancy of the tenant, but paragraph 11.4.4 is to apply in the case of any concession made to the tenant in this respect;
- 11.4.4 the Landlord shall contribute payments to a fund in respect of Lettable Areas that are vacant or that it occupies, and where there are shortfalls in the recovery of contributions from a tenant of its Due Proportion by reason of a tenant being in default or not being obliged to pay (whether as a result of a service charge cap, formal concession or otherwise);
- 11.4.5 the Landlord shall apply [the relevant part of a sinking fund to the cost of replacement of a category item, and] the proceeds of a reserve fund to the periodic cost incurred for which the reserve fund, or some part of it, has been established;
- 11.4.6 [each/the] fund shall be retained by the Landlord in a separate interest-bearing trust account held for the benefit of the Landlord and the tenants as a class, subject to appropriations from the fund in accordance with this paragraph 11; interest accruing on the account, less any tax required by law to be withheld, is to be credited to the fund;
- 11.4.7 the Landlord shall endeavour so far as reasonably practicable to administer the fund[s] so that each tenant bears a Due Proportion of the accumulating liabilities for prospective and contingent costs referable to the term of its tenancy on an even basis spread over the [applicable life-cycles of category items in the sinking fund and ] periodical-cycle of the reserve fund.]

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<sup>35</sup> Following the Court of Appeal decision in *Brown's Operating System Services Ltd v Southwark Roman Catholic Diocesan Corporation* [2007] EWCA Civ 164 and *Friends Life Management Services Ltd v A&A Express Building Ltd* [2014] EWHC 1463, it is generally accepted that reserve funds are to be regarded as tenants' monies, and if the fund has not been expended on expiry or sooner determination of the lease, the tenant is entitled to repayment of any monies contributed to the fund.

## **PART B**

### **MANDATORY SERVICES AND HEADS OF CHARGE<sup>36</sup>**

#### **12. RETAINED PARTS**

- 12.1 The cleaning, lighting and maintenance of the Retained Parts.
- 12.2 The payment of any Outgoings in respect of the Retained Parts.
- 12.3 Keeping the Retained Parts clear of all rubbish.
- 12.4 The cleaning and clearing of Common Media.
- 12.5 The furnishing, carpeting and equipping and ornamentation of the Retained Parts.

#### **13. REPAIRS**

- 13.1 The repair, decoration, inspection, maintenance, renewal, replacement, resurfacing, washing down, cleaning and upkeep of the Retained Parts, the Common Media and other common service facilities and of plant, equipment and tools and utensils serving or used in the Centre.
- 13.2 Cleaning, lighting, repairing, renewing, decorating, maintaining and rebuilding any fences, party walls, party structures, entrance ways, stairs and passages and service areas and Conducting Media and any other items which are or may be used or enjoyed in common with adjacent or neighbouring properties (whether the relevant costs and expenses are incurred by the Landlord, or it is required to make a contribution to those incurred by the owners and occupiers of adjacent or neighbouring properties or by a competent authority).

#### **14. HEATING, AIR CONDITIONING AND VENTILATION AND WATER**

- 14.1 Heating the Centre as may be appropriate in the prevailing climatic conditions and air conditioning and ventilation and providing hot water to the hot water taps in the Centre.
- 14.2 Providing cold water to the cold water taps in the Centre.
- 14.3 The repair, maintenance, inspection, renewal and replacement of all plant and equipment required for or in connection with the working and operation of heating, air conditioning and ventilation and hot and cold water.

#### **15. LIFTS AND ESCALATORS**

- 15.1 The operation of lifts and escalators in the Centre.

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<sup>36</sup> The services will vary depending on the property. Landlords may choose, in the lease drafting, to make some of the mandatory services discretionary and vice versa.

15.2 The repair, maintenance, inspection, renewal and replacement of the lifts, escalators and of all plant and equipment for or in connection with the working and operation of the lifts and escalators.

**16. STATUTORY AND OTHER REQUIREMENTS**

Compliance with the requirements of any legislation or any government department, local authority, other public or competent authority, or court of competent jurisdiction, and of the insurers in relation to the use, occupation and enjoyment of the Centre.

**17. EMPLOYEES AND CONTRACTORS**

17.1 Employment or engagement of Centre management staff or contractors for the maintenance and upkeep of and the provision of Services in the Centre including National Insurance and pension contributions of such employees and recruitment costs and redundancy and severance payments to any of them.

17.2 The provision of uniforms, overalls and protective clothing for such employees or other staff required in connection with their duties.

17.3 The running cost of transport facilities for the building or facilities manager or any other person employed by the Landlord for purposes connected with the Centre.

**18. SIGNAGE AND LANDSCAPING**

18.1 The provision, repair, maintenance, inspection, renewal and replacement of directional and other informative notices in the Retained Parts.

18.2 Landscaping, planting and replanting of the Common Parts and of garden or grassed areas and flagpoles on or within the curtilage of the Centre.

**19. MANAGEMENT PREMISES**

19.1 The operating costs of Management Premises.

19.2 The payment of all Outgoings in respect of Management Premises.

19.3 The payment of any rent or service charge or other costs payable by the Landlord or any reasonable deemed rents in relation to Management Premises.

19.4 The provision, maintenance, inspection, repair and replacement of equipment tools and utensils for the efficient management of the Services.

**20. REFUSE COLLECTION**

The provision of any refuse collection services or other refuse facilities.

**21. FIRE FIGHTING EQUIPMENT AND SECURITY AND PUBLIC ADDRESS SYSTEMS**

21.1 The provision, operation, maintenance, inspection, repair and replacement of:

- 21.1.1 the fire alarms and sprinkler systems;
  - 21.1.2 the ancillary fire prevention apparatus and fire fighting equipment and telephone and public address systems; and
  - 21.1.3 the closed circuit television and intruder alarm systems.
- 21.2 Security arrangements for the safety of occupiers and users of the Centre and their property kept in the Centre.
- 21.3 The engagement of security officers and security services.

22. **MANAGEMENT CHARGES**

The costs and fees incurred in management of the Centre as referred to in paragraph 9

**PART C**

**NON-MANDATORY SERVICES AND HEADS OF CHARGE**

23. **INSURANCES**

- 23.1 Engineering insurances for lifts, boilers, air-conditioning plant, lightning conductor equipment and all other electrical or mechanical equipment and apparatus in the Centre, save to the extent that the Tenant or any other tenant is obliged to effect such insurance.
- 23.2 [Valuation of the Centre and plant and equipment in the Centre for insurance purposes.<sup>37</sup>]
- 23.3 Insurance of the Landlord against employers' liability [and public liability]<sup>38</sup> risks in respect of the Centre.
- 23.4 Such additional insurances (other than in respect of risks the Landlord covenants to insure in accordance with [Schedule ]<sup>39</sup>) as the Landlord may reasonably effect in respect of or incidental to the Centre, its operation and management.

24. **[CAR PARK ENTRY**

Security arrangements for entry to the Car Park.]

25. **AMENITIES IN THE COMMON PARTS**

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<sup>37</sup> Omit if covered by Landlord's insurance obligation.

<sup>38</sup> Omit if covered by Landlord's insurance obligation.

<sup>39</sup> Insert relevant clause or schedule for Landlord's insurance obligation.

25.1 Running in the Common Parts nursery premises, customer courtesy bus services, concierge and shopping service and help and information facilities and other customer amenities, including the provision of staff for the purpose.

25.2 The provision of entertainments, attractions, Christmas and other seasonal led decorations and events at the Centre.

26. **LEGAL PROCEEDINGS**

26.1 Making representations which the Landlord in its discretion reasonably and properly considers should be made against or otherwise contesting the incidence of the provisions of any notice, direction, order, certificate, assessment or proposal relating to or affecting the Centre, where the making of such representations or other contesting will benefit the tenants of the Centre.

26.2 The proper costs of pursuing and enforcing any claim, and taking or defending any proceedings, which the Landlord may in its discretion make, take or defend:

26.2.1 against contractors, consultants, architects, consulting engineers, surveyors and any other professionals employed or engaged in connection with the construction and/or refurbishment and/or repair of the Centre and/or the Premises or any other third party for the remedy of a defect, repairs in or to the Centre or otherwise, for which they or any of them may be liable<sup>40</sup>; and

26.2.2 for the purpose of establishing, preserving or defending any rights, amenities or facilities used or enjoyed by the owners, tenants and occupiers of the Centre, or to which they may be entitled.

27. **PROMOTION AND ATTRACTIONS**

The expenditure properly incurred with respect to promotion of the Centre including employing public relations consultants, advertising in the press or television and on the radio or internet and on and off site public relations campaigns.

28. **SINKING/RESERVE FUND**

[A sinking fund and/or] a reserve fund in accordance with paragraph 11.

29. **[ENERGY EFFICIENCY**

*Any energy efficiency provisions will depend on the particular building and should be drafted accordingly.]<sup>41</sup>*

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<sup>40</sup> Some tenants will want this to be a mandatory service. Paragraph 8.4 does require the Landlord to credit monies recovered against the Landlord's Costs.

<sup>41</sup> The Green Lease Toolkit, published by the Better Buildings Partnership, is available here: <https://www.betterbuildingspartnership.co.uk/green-lease-toolkit-0>. It contains some suggested service charge wording which users may wish to consider.

30. **INTEREST**

Interest as provided for under paragraph 5.

31. **OTHER CHARGES**

All other charges, assessments and expenses (if any) reasonably incurred or paid by the Landlord or on its behalf in connection with the operation or maintenance or proper and convenient management of the Centre.

**[PART D**

**WEIGHTING PRINCIPLES**

32. **METHOD OF WEIGHTING FLOOR AREAS**

32.1 The extent of the Net Internal Area of each [unit] in the Centre shall be divided into tranches.

32.2 By way of adjustment each tranche of Net Internal Area shall then be multiplied by the factor that is attributed to it.

32.3 The adjusted areas of the various tranches shall then be totalled and the result shall be treated as the duly weighted Net Internal Area of the [unit] for the purposes of paragraphs 2.3.1 and 2.3.2.

33. **TRANCHES OF NET INTERNAL AREA AND APPLICABLE FACTORS**

For the purposes of paragraph 32, the tranches of Net Internal Area of each [unit] and the factor attributable to each tranche are:

<b>Tranche</b>	<b>Factor</b>
First 500 m <sup>2</sup>	1.0
Next 500 m <sup>2</sup>	0.8
Next 1000 m <sup>2</sup>	0.6
Next 1000 m <sup>2</sup>	0.5
Next 1000 m <sup>2</sup>	0.4
Excess over 4,000 m <sup>2</sup>	0.3 <sup>42</sup>

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<sup>42</sup> Weighting provisions are most appropriate in a shopping centre context. There is no standard weighting formula and the percentages above are simply examples. In fact, the percentages are differently stated in the RICS Standard (see section 4.2.8.1 for further information). Take instructions on the appropriate tranche and factor.