



## Template lease for free schools, UTCs and studio schools: explanatory note

A suite of model leases have been prepared for use in the free school, UTC and studio school programme. In addition to the lease available on the website, there are variations for use where the property is part of a shared site; or part of a shared building.

It is generally expected that this lease will be used without amendment. The Education Funding Agency (EFA) will conduct initial negotiations with the relevant landlord and the resulting heads of terms will make it clear whether or not this lease is to be utilised.

The model lease contains some optional wording to cover the situation where there is a Local Authority landlord. However, the lease can be used by any landlord and the relevant clauses relating to a Local Authority can be easily deleted if necessary.

This lease contains important provisions to reflect the fact that institutions opening as part of the free school, UTC or studio school programme often have an element of capital funding relating to a programme of works. This lease therefore protects the Secretary of State's investment in the land and buildings.

This note is intended to introduce this model lease and some of the key terms and is not intended to be a substitute for legal advice. The EFA has procured a panel of external law firms who can provide legal advice on the terms of leases on a project specific basis.

The lease is granted for a term of 125 years at a rent of one peppercorn per annum (which in practice is not demanded). Other key elements include:-

- Clause 3.3 - repair and upkeep: the tenant agrees with the landlord to keep the property clean and tidy, make good any damage caused and any deterioration from the commencement of the term of the lease (which is usually the date the lease is completed). The landlord has limited rights to enter the property and carry out repair works in the event of persistent breaches by the tenant causing a safety hazard. In such cases, the landlord can charge the cost of these works to the tenant.
- Clause 3.5 - alterations and additions: there is a general restriction on making either structural or external alterations without first securing landlord's consent but such consent can only be withheld on limited grounds. If the lease is being agreed as part of a wider development programme, consent for these works is usually contained in a supporting document such as an agreement for lease or development agreement and this restriction is then taken to apply to future alterations after that project has completed.
- Clause 3.9 - use: the property can only be used for the provision of educational services and ancillary community, fundraising and recreational purposes.

- Clause 3.12 - dealings: the tenant may share occupation with another academy trust or with any other person who provides services of an educational, community, fundraising or recreational purpose provided that such person or academy does not occupy as a sub-tenant and the arrangement is informal. Formal underlettings for 10 years or less are permitted without the landlord's consent but anything longer is subject to landlord's approval. In addition, the tenant's interest in the lease can be transferred wholly to the Secretary of State, another academy or a successor charity/public body without landlord's consent; or any other party with landlord's consent.
- Clause 5 - insurance: buildings insurance must be procured by the tenant. Although variations to this may be agreed on a project specific basis, the preference is for tenants to procure insurance themselves.
- Clause 6.1 - re-entry: if the tenant uses the property for a purpose that is not permitted by the lease; or fails to arrange insurance cover where required to do so, the landlord can end the lease early. Before doing so, the landlord must serve notice on the Secretary of State and give him the option to put right the breach or transfer the lease to another school trust. This provision is required to protect the capital investment in the property and will only arise where the current tenant has broken the relevant covenants in the lease.
- Clause 6.7 - termination: there is a termination provision that brings the lease to an early conclusion if the funding agreement between the Secretary of State and the school trust is terminated. This clause contains an additional provision allowing the lease to be transferred to another school trust before termination occurs, which is intended to protect the capital investment in the site and also operates alongside a similar provision in the funding agreement.
- Clause 11 - charity: until the institution operated by the tenant is open and operational, it is a non-exempt charity. Once operational, it is an exempt charity. This clause contains alternative wording depending upon whether the lease completes before or after the tenant becomes operational.
- Clause 13 - break right: this clause is an option for the tenant only to end the lease at 25 yearly intervals subject to obtaining the Secretary of State's consent. This avoids the tenant being tied into the lease for the full 125 year term where this is unnecessary for any reason.