You do not automatically have the ability to stay in your space at the end of the term (for instance an expanding tenant may want to take over your space). The lease is silent on a right to renew.

**IN THE NEXT NEGOTIATION, WE SUGGEST INSERTING THE FOLLOWING:**

The Tenant shall have the option to extend the Term of the Lease for a further term of five (5) years (the "Extension Term"). Such right to extend shall be exercisable by notice to the Landlord by not later than six (6) months prior to the expiry of the Lease. The Net shall for the Extension Term shall be market rent for the Leased Premises ("Market Rent"). Market Rent shall mean the annual rental which could reasonably be obtained by the Landlord for the Leased Premises from a willing tenant dealing at arms' length with the Landlord in the market.

No mention of any leasehold allowance from the landlord. Was the space leased as-is or did the landlord provide any cash for you to improve the space?

Often an allowance is provided in installments and the tenant never captures the full value of it. It may be worth checking the offer or letter of intent to see if there was an allowance paid by the landlord and cross reference receipts.

Is there a parking ratio with your property?

If you are entitled to parking stalls your lease should state that you have the right (but not obligation) to the stalls. It should state the price and lock in the price for both the existing term and any renewals.
SECTION 1 - MISSING ITEMS

**Overholding**

There is no mention of what happens if you want to be a month to month tenant at the expiry of the lease. This is important for cases in which you cannot make a decision to commit to a new long term lease or if you are delayed in moving to another location. Normally you are allowed to stay (with the landlord’s consent), but usually at a penalty of 200% of net rent.

**IN THE NEXT NEGOTIATION, WE SUGGEST INSERTING THE FOLLOWING:**

In the event that the Tenant remains in possession of the Leased Premises after the termination of the original Term hereby created, without a written agreement with the Landlord, it shall be at the monthly Base Rental equal to 125% of the Base Rental during the last month of the Term hereof, payable on the first day of each and every month and subject in all other respects to the terms of this Lease, including those provisions requiring the payment of Base Rental and Additional Rent in monthly installments.

**Right to Expand**

No mention of any right to expand in the lease. Was this something that was negotiated? Would it be moving forward?

Here is a sample right of first refusal clause, which is very tenant-friendly. If the landlord is unwilling to accept this language, they may agreed to a step-down version in which they simply make you aware of vacancies before the general public.

The Tenant shall have a continuous right of first refusal to lease any premises (the “Additional Premises” cross-hatched on Schedule “A”) on the third (3rd) floor at any time during the Term of the Lease if, as and when the Landlord receives a bona fide offer to lease from a third party. The Landlord shall notify the Tenant in writing and submit a copy of such offer to the Tenant and the Tenant shall have five (5) business days to agree to lease the Additional Premises on the same terms and conditions of such offer, save and except for the Term which shall be co-terminus with the Tenant’s existing Expiration Date of **<insert date>** and any inducements which will be prorated for the Term, failing which the Landlord may complete the lease with the third party.
SECTION 1 - MISSING ITEMS

**Damage to Building**

It is rare to have a lease that does not address this. What happens if there is a fire or flood? The lease should address:

1. Who assesses the damage (usually an architect appointed by the landlord)?
2. How long is the assessment period?
3. How long is the landlord cure period?
4. Who has the right to cancel the lease?
5. How much notice is provided before the lease is terminated?

**Non-Disturbance**

The lease is silent on what happens to your lease if the landlord sells the building. Normally the new landlord must honor all existing leases and you are protected. While the lack of wording can mean that the new landlord will not have the right to evict tenants, it may be worth inserting a clause to ensure protection.

**IN THE NEXT NEGOTIATION, SUGGEST INSERTING THE FOLLOWING:**

The Landlord hereby undertakes, prior to the sale or transfer of the Building, to formally advise any potential purchaser or transferee of the rights and obligations of the Landlord and Tenant and to obtain from such a purchaser or transferee a written agreement to the effect that the Tenant’s occupancy of the Premises shall not be disturbed and that the Lease will remain in full force and effect. The Landlord further agrees to obtain a non-disturbance agreement from any existing and future mortgagee(s) of the Building to the effect that the Tenant’s occupancy of the Premises shall not be disturbed and that the Lease will remain in full force and effect.
SECTION 1 - MISSING ITEMS

**Landlord Supervision Fee**

There is no mention of a landlord administration fee on leasehold improvements. Does your landlord charge a fee to oversee your construction when you make changes to the space? It can be as high as 15% of the construction budget.

It would be useful to have a specific clause stating that the landlord does not have this right.

**ON THE NEXT RENEWAL, WE SUGGEST ADDING THE FOLLOWING:**

The Landlord will not charge an overhead or administrative fee related to the supervision of Tenant's Work or construction of any Leasehold Improvements by the Tenant.

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**Realty Tax Gross Up**

There is no mention of the realty taxes remaining the same, despite any variations in building vacancy. If the building vacancy rate rises, you want to ensure that the landlord is not charging more realty tax per square foot to cover the shortfall.

**ON THE NEXT RENEWAL, WE SUGGEST ADDING THE FOLLOWING:**

To the extent that Realty Taxes vary with the level of occupancy of the Building, the Proportional Share of Taxes shall be adjusted as if the Building were 100% occupied. For further clarity, the Tenant shall not pay more than their Proportionate Share of Realty Taxes for the Building.
SECTION 2 - FIXING EXISTING ITEMS

Rentable Area

There is no mention of a measurement method or a building gross up factor. Suggest using a laser measurer to find out the usable area of your premises to see what the mark up factor is for your suite.

A normal range is for it to be about 15% less than your rentable area. In other words, most spaces that are 1,000 square feet of actual space are marked-up to 1,150 square feet and that is what you pay rent on.

There is also no protection on the landlord re-measuring the space (and when that happens it usually increases in size).

**IN THE NEXT NEGOTIATION, WE SUGGEST INSERTING THE FOLLOWING:**

The Landlord shall not have the right to re-measure the Premises during the Extension Term or any renewals thereof.

Subletting

You have three restrictions on subletting:

1 - Cannot sublet to other tenants of the building.

2 - Cannot sublet if the landlord has competing available space.

3 - Cannot sublet in the first 18 months of the term or the last 18 months.

**# 1 and # 2 are relatively common. # 3 is very rare and very unreasonable.**

**IN THE NEXT NEGOTIATION, WE SUGGEST INSERTING THE FOLLOWING:**

Clauses 7.1(f), 7.1(g) and 7.1(h) shall be deleted.
SECTION 2 - FIXING EXISTING ITEMS

Making Good

You have the obligation to restore your premises back to "base building" condition at the expiry of the lease.

This is typically a $5-$10 per square foot cost. What's more is that even if you assumed the premises and it was already built, the definition covers any leaseholds installed by any previous tenant.

This clause is usually not difficult to remove on a renewal.

IN THE NEXT NEGOTIATION, WE SUGGEST INSERTING THE FOLLOWING:

Clause 8 - Makegood Provision shall be deleted.

Real Estate Broker Fee

Your last real estate broker will be paid on the renewal.

Are you still in touch?

Was this discussed between you and your broker on the last negotiation?

What if you want to hire a different agent to assist with the renewal?

This should at least be removed moving forward to be clear that your broker will not be automatically paid on every renewal.
SECTION 3 - IMPROVE EXISTING ITEMS

Relocation

The landlord has the right to relocate you within the building. This is typically done to accommodate the growth of other tenants. While this is normal, there should be some modifications to this clause.

**IN THE NEXT NEGOTIATION, WE SUGGEST INSERTING THE FOLLOWING:**

Clause 15 - Relocation shall be amended to include the following:

h) Any increase in square footage shall not be charged to the Tenant for the Term of the Lease.

i) Any reduction in square footage shall cause the Tenant’s rental obligation to decrease in accordance with the new square footage.

Tenant Default

The items of default are normal, but you do not have an ability to "go dark". If you do not occupy the premises for more than one month you are deemed to be in default of the lease. The landlord should be fine with you being able to go dark as long as you are paying rent.

**IN THE NEXT NEGOTIATION, WE SUGGEST INSERTING THE FOLLOWING:**

Clause 23, Item (g) shall be deleted.

Deposit

You provided first and security deposit, which is not as tenant-friendly as first and last months' deposit, since the landlord will continue to have the security deposit for the renewal term.

**IN THE NEXT NEGOTIATION, WE SUGGEST INSERTING THE FOLLOWING:**

The Landlord agrees to apply the initial security deposit to rent coming due in the Extension Term.
SECTION 4 - ITEMS TO KEEP

**Tenant Default**
There are reasonable operating cost exclusions listed and a tenant's right to audit.

**Subletting**
You can profit from subletting. Most leases are silent on this issue.

**Subletting**
You can discount your rate on subletting. Some leases restrict this.

**Entry by Landlord**
The landlord only has the right to exhibit your premises in the last 6 months of the term and must provide 24 hours' notice (most leases do not specify a notice period).

**Questions**
Are you satisfied with the landlord's janitorial and building maintenance staff?

Are there any overdue landlord repairs for your space?

Are there any needed common area renovations (they can be addressed in a renewal negotiation)?

Although difficult to obtain, would you be interested in asking for a right to cancel the lease as part of the next negotiation?

It has been my pleasure to review your lease!

If you have any questions with this review, please feel free to reach me at rob@leaseref.com, and please stay in touch - we love to hear from our customers!