

Green Lease Toolkit

Working together to improve sustainability



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Chairmen's Statement



Peter Clarke



Keith Bugden

Improvement in the environmental performance of our existing properties is vital if we are to reduce the UK's carbon footprint. We believe, by producing this green lease toolkit, we have developed the first clear framework for a collaborative approach to help achieve that. With existing stock accounting for the vast majority of commercial property our hope is that this publication will reach a considerably wider audience than the membership of the **Better Buildings Partnership (BBP)**.

Green leases have been seen by owners and occupiers as potentially contentious and in particular this view applies to the allocation of costs for environmental improvements. The BBP Working Group, tasked with finding solutions to encourage the widespread introduction of green leases, has produced this comprehensive yet flexible guidance to allow for different property types and sizes and the varying levels of knowledge in the property industry.

The toolkit includes the following:

- Non-prescriptive Best Practice Recommendations by which, through a partnership approach, owners and occupiers can agree appropriate arrangements to best fit with the circumstances of individual properties.
- A Model Memorandum of Understanding which can be used in full or in part and which parties can enter into at any stage of a lease.
- Model Form Green Lease Clauses which the BBP believes should be included in new and renewal leases as a minimum as best practice. The extent to which these clauses are used will depend on the parties' ambitions and what is appropriate for individual circumstances.

This framework is being trialled by members of the BBP with their occupiers. The Working Group will continue to review progress and we welcome feedback from all.

Peter Clarke
Chairman
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Background

An important remit of the Better Buildings Partnership (BBP) is to demonstrate leadership and best practice to the wider commercial property market in London by bringing together some of the largest property owners to improve the sustainability and reduce the environmental footprint of existing building stock.

The BBP formed the Green Lease Working Group specifically to develop and test a suite of green lease guidance documents. The group consists of BBP members and associate members chosen to ensure representatives cover areas such as research, practical experience, expert advice and co-ordination with related work. Other participants include the British Council for Offices, the British Property Federation, the Office of Government Commerce, and the Royal Institution of Chartered Surveyors (RICS) along with legal firms Eversheds, Pinsent Masons and Nabarro. There has also been close liaison with the RICS Joint Working Group on Commercial Leases Green Lease Sub-Group.

The Working Group believes that it is essential for owners and occupiers to work together to improve the sustainability and reduce the environmental footprint of commercial buildings. It has therefore developed a set of Best Practice Recommendations, together with a suite of Model Form Clauses for inclusion in new and renewal leases. However, waiting for the inception of a new lease or the renewal of an existing lease will not provide the pace of change required. For existing leases therefore, the Working Group recommends a collaborative approach between owners and occupiers based on a Memorandum of Understanding. This framework provides flexibility for owners, occupiers and their respective advisors on the level of environmental ambition and degree of legal formality. The intention is that this should provide a faster route to change than might otherwise be possible. Not all of the Best Practice Recommendations or model clauses will apply in all cases because individual circumstances will differ. Nevertheless, the group considers that, as a minimum, provisions regarding sharing of data and co-operation on reduction strategies should be achievable in all cases.

Next Steps

Over the next six months, BBP members will trial the operation of the green lease principles and the BBP invites other companies to do the same. The Working Group welcomes feedback and will monitor results with a view to updating the guidance documents as necessary.

Section 1

Green Lease Principles

1. For new and renewal leases, owners and occupiers should seek to incorporate the recommendations set out in the Model Form Green Lease Clauses, found in Section 4.

As a minimum, provisions regarding sharing of data and co-operation on reduction strategies should be included. Suggestions for these provisions are set out in Section 4.

2. For existing leases, owners and occupiers should seek to incorporate the recommendations set out in the Best Practice Recommendations by agreeing a Memorandum of Understanding (MoU) covering environmental issues. A Model Form MoU is set out in Section 3.
3. The extent of the MoU should be agreed between the parties and be based on the Best Practice Recommendations set out in Section 2. It should however be flexible to allow for differences such as:
 - size and nature of building; and
 - existing sustainability commitments.
4. The MoU will be non-legally binding and will not alter the existing terms of the lease. However, it will comprise a co-operative framework within which the parties can agree both generic and specific actions in relation to environmental issues.
5. The MoU will be time limited and need not cover the entire period of the lease.
6. The preservation of the MoU should be encouraged upon any change of occupation or change of ownership.



Section 2

Best Practice Recommendations

The Working Group recommends that the following matters should be considered for inclusion in leases or in a Memorandum of Understanding, as appropriate. Not all of these matters will apply in all cases because individual circumstances will differ. The Group considers that, as a minimum, provisions regarding sharing of data and co-operation on reduction strategies should be achievable in all cases.

Energy

Data Sharing

- Owners and occupiers should share data on energy consumption.
- Owners and occupiers should make provisions for sharing maintenance records for major services equipment.

Frequency of Measurement

- As a minimum, annual consumption data should be shared between owners and occupiers.
- Measurements should be made at a rate which produces meaningful and usable data.

Consistency of Data

- An industry accepted methodology should be used to ensure consistency of data (e.g. LES-TER, IPD Environment Code, GRI, Upstream benchmarks).

Metering/ Sub-metering

- Separate metering facilities should be installed for individual utilities, individual occupiers (in a multi-let building) and special uses (e.g. data centres).
- Consideration should be given to smart-metering technology that can automatically send data on a half-hourly basis to both owners and occupiers.

Energy Efficiency

Co-operation on Reduction Strategies

- Owners should be required to respond to reasonable co-operation requests from occupiers and vice-versa.
- Named contacts between owners, occupiers and managing agents on environmental performance should be shared and updated as necessary.
- Joint targets should be set for energy/CO₂ reductions which could be linked to Asset/Operational ratings (e.g. specific EPC/DEC ratings).

Operational Energy Audit

- Energy consumption should be reviewed periodically to identify and address changes in operational performance, demonstrate success of reduction strategies, identify problems and set future objectives.
- It should be recognised that variations in energy consumption can result from changes in occupancy, use of the building or behaviour.
- Consideration should be given to utilising third parties to provide energy performance contracts.



In 2007, through their responsible management programme, **HERMES** recorded energy, water and waste data in 78% of their directly managed properties. Furthermore, within all their London offices energy and utility use is monitored and audited regularly to identify and implement energy efficiency improvements.



99 GRESHAM STREET is a multi-tenanted office, with additional retail on the ground floor and basement, located in the City of London. The property is owned by Legal & General Property, who with the aid of Green500, have worked closely with the occupiers to break down the barriers between landlords and occupiers in achieving sustainable goals. The work focused on energy, water and waste and in particular looked at ways of reducing energy consumption in the building. A “trial” concluded that by reducing the amount of chilling by 2 hours a day a large cost saving could be made on an annual basis. By turning on the air conditioning at 7.00am in the morning, rather than 5.00am in the morning, an estimated annual savings of £15,000 on running costs could be made as well as reducing CO₂ emissions by 134 tonnes per annum.

Alteration and Replacement of Equipment

- Suitability for purpose, when altering or replacing equipment, should include consideration of sustainable sourcing, future occupation densities and climate change adaptation.
- Simple ‘like for like’ replacement of equipment/plant should be avoided. Improvements should be sought in energy rating or by a reduction in demand in order to downsize equipment e.g. for a boiler replacement – consider improving insulation of the building and purchasing a smaller size boiler.
- Alterations which adversely affect the energy performance of the building should be avoided. Owners and occupiers should consider the energy consumption impact of alterations prior to implementation.
- Owners and occupiers should develop replacement plans for energy inefficient equipment. Replacement is often a knee-jerk reaction to breakdown and speed of replacement is often the priority. Sustainable replacement contingency plans should be developed which have assessed sustainability and energy related issues in the event of equipment breakdown.
- Occupiers should justify energy requirements when specifying energy needs in order to avoid inefficient use of equipment by operation well below design point (e.g. heating systems continuously operating at part load).

Building Occupation and Operation to include BMS

- Building occupancy should be recorded and reviewed against actual energy usage and BMS settings (where a BMS exists). This allows unusual or excessive energy consumption during periods of low occupancy to be identified.
- To avoid unnecessary use of plant and equipment, programmes should be introduced regularly to review control time schedules and settings.

Maintenance

- Equipment should be well maintained and serviced in accordance with manufacturer’s instructions and recommendations, to ensure optimum performance. This is also an opportunity for owners and occupiers to consider more efficient replacements (see Alterations and Replacement of Equipment, above).

Waste

Data Sharing

- Owners and occupiers should share data on amounts of waste sent to landfill and recycled.

Frequency of Measurement

- At a minimum, annual waste data should be shared between owners and occupiers.
- Measurements should be made at a rate, and on a basis, which produces meaningful and usable data.

Consistency of Data

- An industry accepted methodology should be used to ensure consistency of data in respect of waste (e.g. IPD Environment Code – section EC, GRI – EN22, Upstream Benchmarking).



BROADGATE is a 13 acre office and retail estate owned by British Land. Broadgate estate produces around 8,000 tonnes of waste per year. An Estate wide recycling scheme has been set up for glass, cardboard and paper which has helped the estate reach a 42% recycling rate with only 14% going to landfill.

Waste Efficiency

Co-operation on Reduction and Recycling Strategies

- Owners and occupiers should aim to set joint recycling targets.
- Owners should seek to develop building waste strategies for multi-let buildings. This includes the sharing of facilities between occupiers. Thus waste vehicle journeys and collection charges can be reduced.
- Owners should consider the possibility of joint waste strategies with neighbouring buildings.
- Occupiers should undertake programmes to raise awareness of recycling and recycling facilities among staff.
- Special recycling provisions should be made where practicable e.g. for toner cartridges, fluorescent bulbs, mobile phones and batteries – this will reduce disposal costs and avoid chance of fines or legal action.
- Occupiers should consider adopting sustainable procurement codes (e.g. purchase environmentally friendly office consumables and adopt 'take-back' and 're-use' schemes with suppliers for products and packaging).
- All waste should be classified in accordance with the WEEE (Waste Electrical and Electronic Equipment) regulation to enable recycling in accordance with the regulations.

Waste Audits

- Waste data should be reviewed periodically to identify and address changes in the amount of waste generated and recycled, demonstrate success of reduction strategies, identify problems and set future objectives.
- It should be recognised that variations can be expected through changes in building occupancy, use of the building, suppliers or behaviour.
- Waste data should where possible, be attributable to individual occupiers in a multi-let building.

Fit-out and Refurbishment Waste

- Contractors used in building refurbishment must make adequate waste segregation and recycling provisions, even when there is no statutory requirement to do so.
- Contractors should be required to re-use redundant materials where practicable.

Water and Waste Water

Data Sharing

- Owners and occupiers should share data on water consumption.
- Owners and occupiers should make provision for sharing maintenance records for major equipment.

Frequency of Measurement

- As a minimum, annual total water consumption data should be provided.
- Measurements should be made at a rate which produces meaningful and usable data on a regular basis to identify water loss i.e. leaks & overflows.

Consistency of Data

- An industry accepted methodology should be used to ensure consistency of data.



At **BROADGATE ESTATE** significant steps have been taken to reduce the Estate's environmental impact through the creation of the Broadgate Environmental Working Group (BEWG). The BEWG members are represented by a significant proportion of the occupiers, the managing agent and the owner British Land. The BEWG allows members to discuss and share best-practice on issues such as energy, waste and water use. It has led to the development of Charters in waste and energy, a reduction in CO₂ emissions and rain water harvesting. Importantly it allows members to come together and work in partnership to develop a more sustainable working environment.

Co-operation on Reduction and Recycling Strategies

- Owners should be required to respond to reasonable co-operation requests from occupiers and vice-versa.
- Owners and occupiers should set joint targets for reduction and recycling strategies.
- Owners and occupiers should aim to use and install, where possible, high efficiency plumbing fixtures and control technologies (e.g. aerated taps, dual flush toilets, waterless urinals).
- A regular programme of leak inspections should be set.

Use of Rainwater Harvesting

- Treated and recycled water should, where possible, be used in applications where potable water is not a necessity.
- Irrigation systems should, where possible, be fed with captured rain water, grey water, or on-site treatment and employ relevant water saving control systems.

Metering and Sub-metering

- Separate metering facilities should be installed for individual occupiers (in a multi-let building) and major consumption areas (e.g. cooling towers, bathrooms and kitchens) to monitor usage and identify leakages.
- Consideration should be given to smart-metering technology that can automatically send data to both owners and occupiers.

Building Operations and Sharing of Best Practise

Establishment of Building Management Committee

A Building Management Committee should meet periodically to:

- Ensure effective communication of operational performance data.
- Set and review an environmental management plan for the building including specific targets.
- Ensure cleaning and maintenance services are aligned with sustainability targets.

Members of the Committee should include:

- Managing agents/ FM contractor(s).
- Occupier representatives.
- Owner representatives.
- Other parties that impact on the operational performance of the building when required (e.g. suppliers, cleaners etc.).

Inclusion of Sustainability Initiatives in Tenant Handbook

- Owners should produce and provide occupiers with a handbook or information pack which incorporates energy and environmental management information in relation to the building. This should include EPC/DEC ratings and recommendations where available, energy reduction targets, energy metering and monitoring data, an environmental policy, water performance data and waste strategy details.

Reporting and Auditing

- Energy and sustainability performance reports should be shared by owners and occupiers periodically.



HAMMERSON provides occupiers with a Tenants' Sustainability Guide to support retail and office occupiers in developing sustainability fit-outs. The guide offers a blueprint for developing sustainable fit-outs by identifying ways to reduce energy consumption, improve materials selection and minimise waste.

Sharing of initiatives with other Owners and Occupiers

- Achievements should be shared with all stakeholders.
- Owners should provide workshops on their sustainability strategy/policy in order to engage with occupiers and demonstrate why savings are important and where savings can be made.
- Occupiers should provide sufficient training and education to employees and communicate achievements.

Cleaning (for both Owner and Occupier Areas)

- Cleaning contractors should comply with waste management, energy and water conservation policies and be required to use natural, solvent-free and hydrocarbon-free cleaning products.
- Cleaning contracts should specify appropriate cleaning and maintenance procedures for specialist 'green' products (e.g. waterless urinals).
- An awareness-raising and training programme should be provided for cleaners.
- Consideration should be given to the timing of cleaning to minimise, where possible, the use of resources (e.g. lighting, heating or cooling).

Service Charge

Separate Reporting of 'Green' Initiatives and Costs

- Where possible owners should separately identify costs of 'green' initiatives in service charge reporting.

Reporting of Environmental Performance

- Owners should report to occupiers on energy consumption of shared services in owner controlled areas. This could be included in the occupier handbook.
- Owners should consider adjusting the environmental aspects of a service charge to reflect energy/resource efficiency of individual occupiers (e.g. reducing the service charge to reward initiatives such as energy saving).

Fit-out and Refurbishment (Owner and Occupier)

Alterations and Replacements

- Sustainability in sourcing, specification, performance, recycling and suitability for purpose should be considered for all fit-out work, alterations, repairs and replacements.
- Owners and occupiers should not, without appropriate consultations, carry out any alterations without considering the effect of those alterations on the environmental performance of the building (including any Asset/Operational Rating contained with the EPC/DEC).
- Occupiers should assess any environmental performance impact and ensure that requirements under relevant legislation and statutory instruments are met prior to requesting consents for works.
- Owners and occupiers should agree to consider alterations that reduce the need for air conditioning (e.g. night time purging, specify free-cooling).

Consideration for On-site Renewables and Low Carbon Technologies

- Owners and occupiers should consider trialling and evaluating renewable energy and low carbon technology where possible.
- Owners should consider requests for the installation of renewable energy and low carbon technology where operationally possible and where such installations do not adversely affect the value of the building.
- Owners and occupiers should participate in, or initiate, local and/or communal schemes (e.g. district heating/cooling networks with neighbouring buildings) and consider individual building CCHP installation where practicable.



WORKSPACE GROUP run poster campaigns throughout their properties to promote key sustainability messages to encourage occupiers to use their buildings more efficiently. They also carry out 'themed weeks' aiming to cut electricity and waste. A recycling week at Southbank House saw recycling rates increase by 8%.

Consideration of obtaining BREEAM rating when undertaking Major Works

- A target BREEAM rating should be established in advance of any major refurbishment programme.

Re-instatement and Dilapidations

- Owners should consider waiving some occupiers' re-instatement obligations where measures have been undertaken or installed by the occupiers which are shown to have helped to improve the environmental efficiency of the rented areas and/or the building.

Managing Agents

- Managing agents should be contractually required to implement the principles set out in any green lease provisions and/or any Memorandum of Understanding.

Transport

- Owners and occupiers should co-operate with each other to prioritise space for on-site bicycle storage racks, shower and changing facilities for cyclists and spaces for small cars, mopeds or motorbikes.
- Owners and occupiers should be encouraged to establish shuttle links to local public transportation hubs.
- Owners and occupiers should co-operate with each other to produce a Green Travel Plan.

Confidentiality of Data

- Confidentiality concerns by owners and/or occupiers are to be taken into account.
- The purpose of data collection and use of data should be agreed in advance.



At **PALESTRA**, Southwark, the tenants Transport for London and the London Development Agency have worked hard to incorporate renewable technologies into the building. A 63kWp photovoltaic array is situated on the building roof while in the ground floor a CCHP trigeneration scheme containing a fuel cell and reciprocating engine is currently being installed. This will be the first commercial sized fuel cell CHP unit in London.



Section 3 | Model Form Memorandum of Understanding

This Section provides both owners and occupiers with a Model Form Memorandum of Understanding (MoU) which can be used in full or in part to incorporate the Best Practice Recommendations from Section 2. While the following Model Form covers all Best Practice Recommendations, it is designed to be flexible in that owners and occupiers can select clauses appropriate for a specific building. The MoU can be entered into by the parties at any stage of the lease.

DATE

PARTIES [] of [] (the Landlord)
[] of [] (the Tenant)

PREMISES

BUILDING

LEASE dated [] between [] and []

1 MEMORANDUM OF UNDERSTANDING (“MoU”)

- 1.1 The Landlord currently owns the Building and the Tenant currently occupies the Premises under the Lease.
- 1.2 The Parties agree to work together collaboratively to improve the environmental performance of the Building and the Premises.
- 1.3 The Parties agree to consider and where appropriate implement the measures set out below and in Schedule 1.
- 1.4 The Landlord will encourage any other occupiers in the Building to enter an MoU in the same terms as this MoU in order to improve the overall environmental performance of the Building.
- 1.5 This MoU is not legally binding (save where expressly stated to be so). However, the Parties agree to work together in good faith (but without legal obligation) for a period of [twelve] months from the date of this MoU to implement the aims and objectives which are set out below.

2 DATA SHARING

- 2.1 The Parties agree to share with each other all data and relevant information they have in relation to the Building and the Premises (in as much detail as is available to them) in respect of:
 - Electricity consumption
 - Gas consumption
 - Other fuel consumption
 - Water consumption
 - Waste generation, management and recycling
 - Maintenance of plant and equipment used in connection with the above
- 2.2 Such data and relevant information will be provided [annually] as a minimum in a form or methodology which the Parties agree upon as being appropriate for the purpose.

- 2.3 All such information will be provided in a form which produces meaningful and useful data.
- 2.4 An industry accepted methodology, agreed by the Parties, will be used to ensure consistency of data (e.g. LES-TER, IPD Environment Code, Upstream benchmarks etc).

3 BUILDING MANAGEMENT COMMITTEE

- 3.1 The Parties will set up a Building Management Committee which will meet [annually] [quarterly] [on an ad hoc basis].
- 3.2 The Building Management Committee will comprise representatives of the Landlord, the Tenant, any managing agent employed by the Landlord or Tenant and other persons involved from time to time in the operation or management of the Building and the Premises as the Parties deem appropriate.
- 3.3 The Building Management Committee will:
- (a) review;
- the data and other information shared by the Parties under paragraph 2;
 - the environmental performance of the Building generally;
 - any changes to the Building, the Premises or its operation which may affect the environmental performance of the Building or the Premises in the future;
 - any forthcoming changes in law or practice which may be relevant to the environmental performance of the Building and the Premises.
- (b) seek to agree an environmental management plan for the [Building]/[Premises] or [review the Landlord's environmental management plan for the Building] and agree upon annual targets for:
- the reduction of energy consumption, carbon emissions, water use and waste at the Building and the Premises;
 - the increase, where possible, in the use of plant and equipment based on renewable technologies, renewable energy, recycling of waste, recycled water and captured rainwater for the Building and the Premises;
 - other measures which it is practical to adopt in order to improve the environmental performance of the Building and the Premises.
- (c) produce an annual statement¹, which:
- (i) contains a summary of the energy and water use and the waste generated by the Building and the Premises;
 - (ii) sets out the targets agreed pursuant to (b) above;
 - (iii) sets out progress towards achieving the targets agreed for previous years and identifies any other achievements (e.g. reductions in fossil fuel consumption).
- 3.4 The Parties will provide each other with the names of the person(s) within their organisations and in any managing agents' organisations who should be contacted on issues relating to the environmental performance of the Building or the Premises.

4 BUILDING MANAGEMENT SYSTEM

- 4.1 Where the Landlord controls the hours of operation of any heating, lighting or air conditioning services to the Building and/or the Premises, the Tenant will provide to the Landlord details of its hours of occupancy of the Premises and its requirements for heating, lighting and air conditioning services for the Premises and will keep the Landlord informed of any changes in such requirements.
- 4.2 Where a Building Management System exists for the Building, the Landlord will:
- (a) where appropriate, explain to the Tenant how the system works;

¹ Note the Carbon Reduction Commitment Regulations (which are not yet in force) contain reporting requirements and this report should have regard to the timetable for CRC reporting.

- (b) ensure that, wherever practicable, the settings of the system are adjusted and regularly reviewed with a view to minimising unnecessary provision of heating, lighting or air conditioning services to the Building and the Premises and to reflect the information provided by the Tenant under paragraph 4.1 above.

5 REINSTATEMENT OF TENANT'S ALTERATIONS

The Landlord will give reasonable consideration to:

- (i) waiving any entitlement it may have to require reinstatement of alterations carried out by the Tenant; and
- (ii) not including reinstatement requirements on the grant of any Licence for Alterations where such alterations improve the environmental performance of the Building and/or the Premises and the Landlord considers that it will not need to remove or reinstate such alterations at the end of the Lease.

6 CO-OPERATION ON SCHEDULE 1 MEASURES

- 6.1 The Parties will work together to consider and seek to implement, if appropriate, the measures against which a tick has been placed, set out in Schedule 1.
- 6.2 The Parties will co-operate with each other in complying with the requirements of any Carbon Reduction Commitment scheme to which either of them may be subject and which affects the Building and/or the Premises.

7 MANAGING AGENTS

The Parties will require their respective managing agents, if appointed, to implement the principles and objectives set out in this MoU.

8 NEW OWNERS AND OCCUPIERS

- 8.1 This MoU is personal to the Parties and will apply only for so long as the Landlord owns the Building and the Tenant occupies the Premises.
- 8.2 If the Landlord disposes of its interest in the Building, the Landlord will encourage the new owner to enter into a similar MoU with the Tenant and with other occupiers of the Building.
- 8.3 If the Tenant disposes of its interest in the Premises or sublets them, the Tenant will encourage any new occupier of the Premises to enter into a similar MoU with the Landlord.

9 RENEWAL OF THIS MEMORANDUM OF UNDERSTANDING

At the end of the period of [twelve] months (referred to in paragraph 1.5), the Parties will review the progress which has been made in improving the environmental performance of the Building and the Premises, and where appropriate, the Parties will renew this MoU for a further period of [twelve] months or such other period as is agreed between them at the time.

10 GENERAL

- 10.1 It is acknowledged that this MoU is not supplemental or collateral to the lease and is not to be taken into account when construing the provisions of the Lease and that the provisions of the Lease shall prevail over anything in this MoU.
- 10.2 Each Party agrees that information provided to the other pursuant to paragraph 2 of this MoU shall be used only for the purposes of implementing this MoU and for no other purpose whatsoever and that they shall keep all such information confidential and will not disclose it to any other person (save their agents, consultants or contractors who need to have such information for the purposes of this MoU) other than if required to do so by law or with the written consent of the other Party.
- 10.3 The Parties agree that this paragraph 10 is legally binding and will last for a period of six years from the date of this MoU. This paragraph 10 is governed by English law.

SCHEDULE 1

1 ENERGY

- 1.1 Separate metering facilities for individual utilities for the Premises and the common parts and for other occupiers and special uses.
- 1.2 Where appropriate, the use of smart or automatic metering technology in the Building and/or the Premises.
- 1.3 Where appropriate and available at acceptable rates, the purchase of energy from renewable sources.
- 1.4 On the Landlord's part to give reasonable consideration to requests by the Tenant for the installation in or upon the Building or the Premises of plant and equipment based on renewable technologies (including roof mounted equipment) provided such installations do not adversely (in the opinion of the Landlord) affect the value or appearance of the Building.
- 1.5 Where appropriate participate in local and/or communal schemes for energy generation or provision.

2 WASTE

- 2.1 On the Landlord's part, to develop and agree with the Tenant and other occupiers of the Building a waste strategy for the Building including, where practicable, the sharing of recycling and other waste facilities by the occupiers and joint waste strategies with neighbouring buildings.
- 2.2 Appropriate recycling arrangements for printer cartridges, fluorescent bulbs, batteries and similar items.
- 2.3 The adoption of sustainable procurement codes (e.g. purchase of environmentally friendly office consumables and the adoption of "take back" and "re-use" schemes with suppliers for products and packaging).
- 2.4 On refurbishment and fit-out, require contractors to make adequate waste segregation and recycling provisions and to re-use redundant materials wherever practicable.
- 2.5 All electrical equipment in the Building or the Premises which is to be disposed of will be disposed of by the equipment owner in accordance with the WEEE Regulations 2006.

3 WATER

- 3.1 The installation of high efficiency plumbing fixtures and control technologies in the Building and the Premises.
- 3.2 A regular programme of leak inspections at the Building and the Premises.
- 3.3 Where possible, the use of treated and recycled water, captured rain water and grey water, where potable water is not a necessity.
- 3.4 The use of relevant water saving control systems.

4 ENERGY AUDIT

- The appointment [by the Landlord] of a suitably qualified person to undertake an audit or assessment of the environmental performance of the Building and the Premises and to advise upon a strategy for implementing the aims and objectives set out in this MoU.

5 ALTERATIONS AND REPLACEMENT

- 5.1 The reasonable consideration of sustainable sourcing, the use of energy efficient and sustainable products and materials, recycling and the environmental performance and impact of all replacement of plant and equipment and of all alterations.
- 5.2 When replacing plant and equipment, the use of energy efficient plant and equipment and reasonable consideration of reductions in energy use and for improvements in energy rating (including any rating contained within an EPC or DEC).
- 5.3 Avoiding alterations which have an adverse impact on the energy performance of the Building or the Premises.
- 5.4 On the Tenant's part the provision to the Landlord of sufficient information in relation to the environmental impact of proposed alterations, on the making of any application for the Landlord's consent to such alterations.
- 5.5 The Parties to give reasonable consideration to alterations that reduce the need for air conditioning and other energy consumption.
- 5.6 Agreeing a target BREEAM rating prior to either party carrying out alterations for which a BREEAM rating would be available.

6 TRANSPORT

- 6.1 The provision of space for bicycle storage, shower and changing facilities for cyclists.
- 6.2 The provision of spaces for small cars, mopeds or motorbikes.
- 6.3 The establishment of shuttle links where practicable to any local transportation hubs.
- 6.4 Agreement of a 'Green Travel Plan'.

7 CLEANING

- 7.1 Requiring cleaning contractors to comply with any waste strategy or any energy or water reduction strategy agreed by the Parties and to maximise the use of natural solvent free and hydrocarbon free cleaning products.
- 7.2 Specifying appropriate cleaning and maintenance procedures for specialist "green" plant, equipment, fixtures or fittings.
- 7.3 Programming cleaning times to minimise the use of lighting, heating and air-conditioning resources.
- 7.4 Providing awareness raising and training to cleaners.

8 SHARING INITIATIVES

- 8.1 Without breaching the confidentiality of information as required by paragraph 10.2, the Parties will be free to share with others their targets and achievements under this MoU.
- 8.2 On the Landlord's part, to provide or arrange for workshops for the Tenant and other occupiers on their sustainability initiatives to demonstrate how reductions and savings to energy, water and waste consumption can be made.
- 8.3 The provision of training and education and the communication of achievements to employees.

9 SERVICE CHARGE

- 9.1 On the Landlord's part, where practicable, the separate identification of the cost of sustainability/environmental initiatives within the service charge account.
- 9.2 On the Landlord's part, the consideration of service charge adjustments to reflect the use of energy and water by individual occupiers.

10 TENANT HANDBOOK

On the Landlord's part, the provision to the Tenant of a handbook or information pack which includes energy and environmental management information about the Building (including any EPC/DEC ratings and recommendation reports, reduction targets, energy metering and monitoring data, an environmental policy and water performance data and waste strategy data).

Section 4 | Model Form Green Lease Clauses for Inclusion in New Leases or on Lease Renewal

This Section provides Model Form Green Lease Clauses for inclusion in new or renewal leases to support the parties in their aim to run their building in a sustainable way. It is envisaged that parties who wish to have a green lease may also agree to sign an MoU, substantially in the form set out in Section 3. The suggestions made in this section are intended to supplement the MoU by incorporating provisions in the lease itself. The extent to which clauses are included in the lease will be determined by the parties' ambitions i.e. how 'green' they want their lease to be and what is appropriate given other relevant circumstances.

The suggested clauses are not designed to be a substitute for legal advice; in considering their inclusion in a new lease or on lease renewal, the Working Group suggests that parties discuss with their advisers what their level of ambition is, which of these clauses they wish to be included and whether they wish to go even further than these recommendations. It is anticipated that this section will act as a guide to the key issues.

The level of ambition that parties will have as regards to how green they wish their lease to be may vary considerably. This document sets out the provisions which the Working Group considers necessary to achieve a minimum level of environmental sustainability for the property. It also identifies alternative and more challenging provisions which could be included.

It should be noted that this section focuses on clauses/ changes that are recommended in respect of new leases/ lease renewals for multi-let office buildings. Some of the suggested clauses will also be appropriate for different types of lease (e.g. buildings occupied by a single tenant) or buildings used for different purposes (e.g. shopping centres).² Parties considering incorporating such provisions into an existing lease should review these suggestions to ensure that what is proposed is appropriate for the property and parties in question.

It should also be noted that the Working Group has not made any recommendations as to how the costs of installing any equipment or making other physical changes to the property in order to improve its sustainability will be borne or how any savings associated with improvements will be allocated. This is a matter for the parties to discuss and agree as appropriate to their circumstances. In addition, this section does not make suggestions for the treatment of the Carbon Reduction Commitment trading scheme due to be introduced pursuant to the Climate Change Act 2008. Draft Regulations on the scheme have recently been published and subsequent versions of this document will cover this so far as the Working Group considers appropriate.

Areas of Leases Where Changes are Suggested

The following areas are suggested as those where new clauses or amendments to existing clauses should be considered. As a minimum, every lease which purports to be a Green Lease should address these issues:

Co-operation Obligation

The Lease should contain a clause which encourages the parties to cooperate (under the auspices of an MoU) to ensure that the building is run in a manner which is as sustainable and efficient as reasonably possible in respect of energy and water consumption and waste generation.

² The suggested drafting assumes a multi-let property and so there are references to "the Building" and the "Demised Premises" in the suggested drafting. These will need amendment for use in the cases of buildings let to one tenant

Suggested drafting:

“The Landlord and Tenant agree in good faith but without legal obligation to agree and implement a Memorandum of Understanding with the aim of reducing energy and water use within the Building and the Premises and reducing and recycling waste”.

Environmental Management Plan (“EMP”)

Where the Landlord employs a managing agent and/ or a facilities manager, the terms of such appointments should dovetail with the obligations accepted by the Parties under the MoU.

Arrangements should be made to ensure that the Tenant is obliged to cooperate with the Managing Agent/ or facilities manager in respect of sharing data needed for the EMP, allowing reasonable access to the building and so forth.

Suggested drafting:

“The Landlord will use reasonable endeavours to ensure that:

- (i) when appointing third parties for the supply of services to or management of the Building they are suitably qualified and accredited for their specified role³*
- (ii) its Managing Agent or other party responsible for the operation or management of the Building will:*
 - (a) either put in place an appropriate Environmental Management Plan that is suited to the size and occupation of the Building or where the Memorandum of Understanding requires the Building Management Committee to put in place an Environmental Management Plan, work with the Building Management Committee to achieve this objective;*
 - (b) attend the meetings of the Building Management Committee; and*
 - (c) keep all data provided by the Tenant confidential (save where disclosure of it is required by law) and only to use such data to ensure that the Building is run in a sustainable way that minimises its environmental impact.*

The Tenant agrees that the Managing Agent or other party responsible for the operation or management of the Building will be entrusted to use the energy and water consumption data and the data regarding waste generated by the Building provided by the Tenant at or ahead of each BMC meetings for the purposes of creating the EMP and ensuring that the Building is run in a sustainable way that minimises its environmental impact.”

Building Management Committee⁴

In order to run the Building in a sustainable way, communication between the parties is critical and must occur in a regular way between the appropriate members of the Landlord’s staff (or Managing Agent) and the Tenant’s staff. Where a Building Management Committee already exists, the parties will include environmental issues on the agenda. Where no such committee already exists, the parties will set one up.

Suggested drafting:**EITHER OPTION A**

The Landlord will set up a Building Management Committee comprising a representative of the Landlord, (or its Managing Agents), the Tenant(s) and such other third parties deemed necessary by the parties to meet [quarterly⁵] (or on an ad hoc basis) to:

- a) consider the adequacy and improvement of data sharing on energy and water use and waste production/ recycling;*
- b) agree the targets and strategies to reduce energy use and water consumption, improve waste management in the Building, consider green travel options and agree strategies to implement other aspects of any agreed Memorandum of Understanding;*

³ It may be appropriate to require that such parties are accredited under a recognised standard such as ISO 14001 or BS 8555..

⁴ It is considered that this clause should be expressed as a requirement to set up the BMC in respect of the first lease of a building and that in respect of subsequent leases, that the Tenant will be obliged to (i) join the BMC by nominating a representative and (ii) attend the meetings of the Committee wherever practicable/ upon sufficient notice being given.

⁵ This sort of arrangement is most applicable to a multi-let building. In respect of buildings with a single tenant with an FRI lease, a different frequency of meetings may be appropriate.

OR OPTION B

The Building Management Committee will also:

- a) *consider the adequacy and improvement of data sharing on energy and water use and waste production/ recycling;*
- b) *agree the targets and strategies to reduce energy use and water consumption , improve waste management in the Building, consider green travel options and agree strategies to implement other aspects of any agreed Memorandum of Understanding;*

Where Building Management Committee meetings are attended by more than one tenant, the Landlord and Tenant shall hold additional meetings as may be reasonably necessary to discuss matters relating to a) and b) above which are concerned exclusively with the Demised Premises [and which either party wishes to discuss only with the other].

The Tenant will co-operate in the setting up of the Building Management Committee and the Parties' representatives will attend the meetings of the Building Management Committee wherever reasonably practicable and provided that appropriate notice of such meeting is given by the party arranging such meetings.

Data Sharing and Metering

The Working Group considers that sharing data about the utilities consumption and waste generated by the occupation of the building is crucial. To that end obligations should be placed on the parties to share their relevant data as appropriate.

Suggested drafting:

The Landlord and Tenant will share the data they hold⁶ in respect of energy and water use and waste production/ recycling [quarterly] between themselves and with any other third party who the parties agree needs to receive such data.

The Parties will keep the data disclosed under this provision confidential and will only use such data for the purposes of ensuring that the Building is run in a sustainable way that minimises its environmental impact.

The Landlord will ensure that similar restrictions on the publication and use of such data are placed on its Managing Agent/ and any other party responsible for the operation or management of the Building.

AND EITHER

The Landlord shall have the right [at its own cost] to install separate sub-metering of utilities⁷ used in the Common Parts and the Demised Premises and the Tenant shall have the right at its own cost to install separate sub-metering of utilities used in the Demised Premises. The Parties will give each other the necessary access in order to allow for such metering to be installed provided that reasonable notice of the intention to install such metering is given and provided further that such installation will not disturb the Tenant's beneficial use and occupation of the Demised Premises.

OR

The Landlord shall install separate sub-metering of any Common Parts and the Demised Premises and the Tenant shall install separate sub-metering of utilities used in the Demised Premises. The Parties will give each other the necessary access in order to allow for such metering to be installed provided that reasonable notice of the intention to install such metering is given and provided further that such installation will not disturb the Tenant's beneficial use and occupation of the Demised Premises.

⁶ The Lease could go further than this by imposing duties to obtain such data if it is not already produced.

⁷ These provisions may be inserted where the Common Parts and the Demised Premises are not already separately metered. The BBP Green Leases Working Group recognises that it would be better to decide what metering was necessary and have it installed ahead of the lease being signed but where the timing of the transaction does not allow this or where the lease of a building without sub metering is being negotiated these terms may be appropriate. Half hourly digital metering is currently considered the best option (as noted in the BBP Best Practice Recommendation) but has not been specified in this drafting to ensure flexibility to adapt to changing technology.

Flexibility⁸

In order to give the parties flexibility unilaterally to take steps which are aimed at reducing energy or water use or improving waste management in the event that the parties do not reach agreement (or sufficient agreement) in an MoU, the Working Group considers the lease should include provisions which enable unilateral action to be taken. Such provisions will relate to landlord's access rights to, and rights to do works within, the demised premises and the tenant's rights to carry out alterations. Drafting for these elements is suggested below:

Suggested drafting:

The Landlord and its servants or agents or contractors shall be entitled at all reasonable times and on reasonable prior notice to the Tenant to enter and remain on the Demised Premises for

- a) *the purpose of taking reasonable steps to review or measure the Tenant's energy and water use and its waste production or waste management save where up-to-date information in this respect has already been provided to the Landlord by the Tenant;*
- b) *carrying out works which are agreed by the Tenant⁹ (acting reasonably) and are aimed at more effective management of, or reducing, energy or water use or waste production and for setting up and managing recycling schemes (provided that such works cause as little disruption as reasonably possible and when complete do not adversely affect the Tenant's beneficial use and occupation of the Demised Premises and that any damage caused by such works is made good)¹⁰;*
- c) *for the purposes of preparing EPCs or DEC's or undertaking an air conditioning inspection and for such purposes the right to carry out the necessary tests on equipment.*

The Tenant may with the Landlord's consent (which shall not be unreasonably withheld) carry out alterations to the Demised Premises aimed at reducing energy use or water consumption or improvement of waste management provided such alterations do not adversely affect the performance or life cycle of any mechanical or electrical services or any other plant, equipment or services in the Building and are not structural alterations.

Restrictions on Tenant's Alterations and Landlord's Works

Both Tenant's alterations and works by the Landlord to common parts or plant and equipment have the potential adversely to affect the efficient use of energy or water in the demised premises or the building. The BBP Green Lease Working Group considers that restrictions should be imposed on the parties to prevent works which having such an effect.

Suggested drafting:

Where the Tenant wishes to make changes to the Demised Premises or its use which may adversely impact on an existing EPC rating or which may adversely affect the efficiency of the use of energy or water within the Demised Premises or the Building, the Tenant shall provide sufficient information to the Landlord to enable the Landlord to ascertain the effects of the alterations and the Tenant shall consider [and, where reasonable, implement] any suggestions the Landlord makes to [avoid /minimise] any such adverse effect.¹¹

The Landlord will consider any reasonable suggestions made by the Tenant to [avoid/minimise] so far as reasonably possible, any adverse impact on an existing EPC [or DEC] rating or the efficiency of the use of energy or water within the Building which may be caused by any works to be carried out by the Landlord.

⁸ Generally a Landlord would be able to carry out improvements to Common Parts or Plant and Equipment without an express provision to this effect either because nothing in the lease prohibits this and/or the Landlord has express rights to take steps it deems necessary for good estate management. However, the parties may wish to consider whether any additional provisions might be required to enable a landlord to carry out such improvements where they are aimed at reducing energy and water use and waste production without liability for disruption to tenants. It is not proposed that the cost of such works would be within the service charge but the parties may wish to consider this.

⁹ Parties may wish to consider dispensing with any requirement for tenant's consent thereby giving a landlord an absolute right unilaterally to carry out improvements.

¹⁰ It is not intended that the landlord would be obliged to undertake such works but that if it chose to then it would have the appropriate powers to do so. The clause seeks to balance the interests of the parties.

¹¹ This clause requires only that the Tenant "considers" suggestions to avoid/minimise the adverse effects of alterations. The parties could go further and require such suggestions to be adopted, possibly limited only by caveats as to their economic or practical feasibility.

Where the Tenant carries out alterations which necessitate the provision of a new EPC, the Tenant shall obtain a new EPC [at its own cost] and shall provide a copy of such EPC to the Landlord.

Where the Tenant carries out alterations to any plant equipment or services in the Building which affect the energy efficiency of such plant equipment or services, the Tenant shall provide such information about the energy efficiency of the altered plant or equipment as the Landlord shall reasonably require.

Dilapidations Clause

The Working Group recognises that blanket requirements for removal of Tenant's alterations can lead to unnecessary waste and inefficiencies. It also recognises however, that where the landlord judges it necessary for the reletting of the demised premises, it should not be prevented from requiring the removal of tenant's alterations which the landlord would have to remove in order to present the demised premises in the manner it deems appropriate for re-letting. On the occasion of each request by a tenant for landlord's consent to alterations, the parties should give consideration to sustainability issues in connection with the imposition and scope of any reinstatement requirement. In view of the fact that it is difficult to foresee at the time of consenting to the works what reinstatement a landlord is likely to reasonably require, any lease restriction on reinstatement should take this uncertainty into account.

Suggested drafting:

(To be incorporated in reinstatement of alterations and yield up provisions)

The Tenant shall not be required to reinstate any tenant's alterations which have been carried out lawfully during the term and which improve the energy or water efficiency of the Demised Premises unless such reinstatement is reasonably required by the Landlord having regard to its intentions in respect of the use or re-letting of the Demised Premises or the Building after the expiry or sooner determination of the term.

Rent Review

Where clauses are incorporated giving the parties the right to carry out works aimed at reducing energy, water use or waste production (as in the section entitled 'Flexibility') questions arise as to the treatment of such works on rent review. The BBP Green Lease Working Group recognises that this will be a matter for discussion between the parties but would suggest that the following principles represent a fair position for both parties:

- a) Such tenant's improvements, provided they are carried out in compliance with the lease, should be disregarded. This would normally be assumed in modern rent review clauses in any case.
- b) Where the landlord takes advantage of right to carry out such works at its own cost and those works reduce utility bills or enhance the environmental performance of the demised premises or the building, any benefit which such savings would have on the open market rental value of the demised premises should be taken into account on review. For the avoidance of doubt this is only to capture increases in open market rent and is not seeking to rentalise capital expenditure. The parties should consider what agreement they can reach on these issues.

However if these principles cannot be agreed by the parties then the Working Group would still recommend the inclusion of provisions such as those set out under the section entitled 'Flexibility', above coupled with an express disregard of such works for rent review purposes, leaving the parties free to carry out the works.

Where a tenant has made alterations which have an adverse impact on the existing energy or water efficiency and waste production of the building and where this impact in turn has a negative impact on the rental value, it is considered that the negative impact of such alterations should be disregarded on rent review¹².

Dispute Resolution

The parties may wish to consider the extent to which their usual remedies for breach of any lease clauses should apply to green lease clauses and may wish to consider providing for other dispute resolution mechanisms and/or limiting their remedies in relation to green clauses.

¹² Most modern rent review provisions will include a disregard of the effect on rent of alterations carried out lawfully by a tenant and/or an assumption that no work has been carried out which diminishes rental value. Such a clause may be wide enough to cover the issues referred to in this paragraph without the need for any additional wording.

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The BBP would like to express its thanks to Becky Clissman of Eversheds, Siobhan Cross of Pinsent Masons and Graham Lust of Nabarro for their contributions to the preparation of Sections 3 and 4.



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CLARITY MATTERS



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April 2009