

# Green Lease Toolkit

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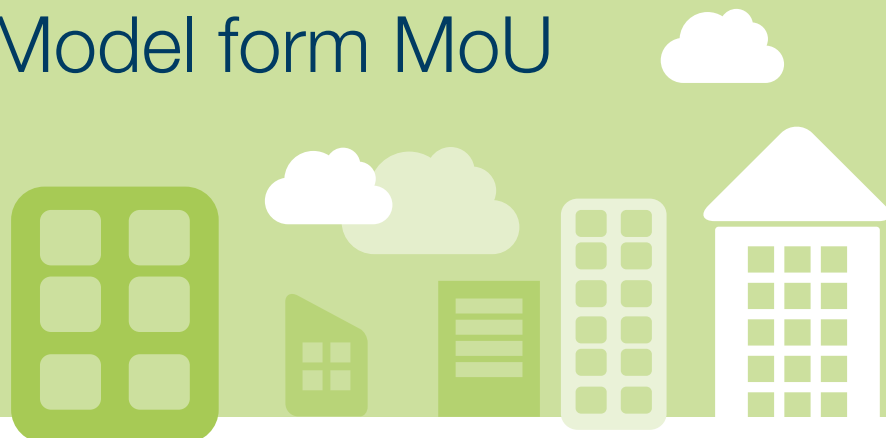
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# Introduction

Owners and occupiers of commercial property are increasingly accepting the fact that the Environmental Performance of the buildings they own and occupy is not an issue that they can ignore and are recognising that it is now an integral element of business risk management. Whether limiting regulatory risk exposure, retaining asset value, ensuring business continuity, meeting client demands, reducing operational costs or managing reputation, the drivers are strong and are likely to grow.

Opportunities to make significant environmental improvements exist within many commercial buildings, yet the reality is we are not seeing the rate or scale of change required if we are to stand any chance of meeting the Government's carbon reduction targets. For a large percentage of commercial buildings a key problem is the relationship that exists between owners and occupiers. An historic adversarial relationship and lack of trust between the parties present real barriers. In terms of environmental management, however, we're seeing some good progress and a growing recognition that one party can only make limited progress without the other. Greater collaboration is clearly required.

The BBP's first Green Lease Toolkit provided a clear framework to support greater owner occupier engagement and collaboration. Much has changed, however, since its launch some four years ago now and, taking the practical experiences of our members, industry feedback and advice from our legal advisers, we have developed this update.

The Toolkit includes the following:

- An introduction to the subject of green leases and Memorandums of Understanding and why businesses should be adopting them.
- Best practice recommendations which, through a partnership approach, owners and occupiers can use to agree appropriate arrangements to best fit with the circumstances of individual properties.
- Model form green lease clauses which can be included in new and renewal leases. The extent to which these clauses are used will depend on the parties' ambitions and what is appropriate for individual circumstances.
- A model form Memorandum of Understanding which can be used in full or in part and which parties can enter into at any stage of a lease.

Of course a green lease or Memorandum of Understanding does not automatically result in a more environmentally efficient or sustainable building and indeed both forms are fundamentally useless if they are filed away with the deeds to the property, never to be seen again! Commitment is required if real progress is to be made, however such commitment will inevitably result in rewards for both parties.

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## Key messages

### What is a green lease?

A green lease is a standard form lease with additional clauses included which provide for the management and improvement of the Environmental Performance of a building by both owner and occupier(s). Such a document is legally binding and its provisions remain in place for the duration of the term. Green leases tend to be relevant only in the context of leases of commercial buildings.

### What is a Memorandum of Understanding?

An MoU provides owners and occupiers with a written agreement setting out how a building's Environmental Performance will be managed and improved (by both parties). This agreement is not legally binding, can be updated from time to time without amending the lease and can remain in place for any chosen length of time. It generally provides a faster route to agreement than is possible with a green lease.

### Why are green leases and MoUs important?

Commercial buildings and their occupiers contribute significantly to the UK's energy consumption, water consumption and waste generation. These effects arise due to activities within buildings, as well as from travel to and from them and the impact of materials used in fit-out, alteration and refurbishment work.

Given that a significant proportion of the commercial building stock that will exist in 2050 has already been built, reduction targets cannot be met by simply improving the efficiency of new buildings. Substantial carbon reductions are required from the whole sector – the owner and occupier of every commercial or public building has a part to play. Green leases and MoUs provide useful tools to support both owners and occupiers by setting out provisions for the efficient environmental management and improvement of their buildings.

### How can green leases and MoUs help?

A key barrier to the improved Environmental Performance of commercial buildings is the split responsibility/incentive between owner and occupier in the procurement, control and use of resources. Green leases and MoUs help to overcome this challenge by providing a framework for engagement on environmental issues. They enable the parties to better understand each other's environmental aspirations, identify where opportunities for collaboration exist and develop an understanding of how improvements can best be undertaken.

### Will green leases and MoUs make a difference?

A green lease or MoU does not automatically result in a more environmentally efficient or sustainable building. At the end of the day it is simply a piece of paper. Commitment is required from both parties (to either form of document) to fulfil the aspirations and commitments agreed and to work in partnership to reduce the adverse environmental impacts of the building(s) they own and occupy. An effective forum to discuss these issues and support this process is a Green Building Management Group. For further information see the [BBP Green Building Management Toolkit](#).

### Is better education needed?

Green leases and MoUs are sometimes seen as contentious. This is often due to a lack of understanding of what they are designed to achieve and how they work. The 'green' clauses in a lease may be struck out by lawyers because the wording is unfamiliar, despite the fact that such clauses are likely to be beneficial to their clients. Likewise, sales and lettings agents may advise their clients against considering a green lease or MoU for fear that by doing so a deal may be delayed or even de-railed, without considering the potentially significant advantages of such documents to their clients. These are explained in further detail in the [BBP Transactional Agents Sustainability Toolkit](#).

A step change is required by owners, occupiers and all commercial property advisers to ensure that green leases and MoUs are seen as a benefit, rather than a burden.

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## Who is this Toolkit for?

### Owners

The Toolkit provides commercial property owners with appropriate, relevant environmental clauses for incorporation into their standard lease agreements, and a template Memorandum of Understanding (MoU) which can sit alongside a lease and be used as a tool to enable an owner to work in partnership with occupiers to improve the Environmental Performance of their buildings.

### Occupiers

The Toolkit provides occupiers of commercial space with information about the types of green lease provisions they may find in standard lease agreements or MoUs or which they may wish to suggest are incorporated by the building owner. It also explains the background and purpose of these clauses.

This should help occupiers consider the environmental requirements they may wish to agree or impose when taking new space. It is a useful tool to help occupiers engage with their landlords and articulate the ways in which they would like their building managed to improve its Environmental Performance.

### Letting Agents and Lawyers

The Toolkit provides examples of the drafting which can be expected to be included in new leases, at the request of the owner and/or occupier. As the intermediaries in lease negotiations, both letting agents and lawyers should help to ensure that any green lease provisions meet the environmental aspirations of the parties.

### Managing Agents

The Toolkit provides assistance to Managing Agents who manage a building to which a green lease or MoU applies. It explains the rationale behind decisions made between owner and occupier(s) which the Managing Agent may be asked to implement and considerations to be born in mind when delivering services to the building. For further information on the range of services Managing Agents can provide to improve the Environmental Performance of the buildings they manage see the [BBP Managing Agents Sustainability Toolkit](#).



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# Why is sustainability important?

## Owners

Owners should find that buildings with strong Environmental Performance will be more attractive to both occupiers and investors. Sustainability credentials are increasingly seen as a standard characteristic of good quality commercial space. Failure, therefore, to meet what are now market norms may have an adverse effect on the time a building takes to let, lease lengths achieved and the enthusiasm of occupiers to renew.

Many organisations also consider seriously the Environmental Performance targets which the buildings they own or occupy achieve (for example a minimum EPC rating, its BREEAM or LEED rating) or have corporate targets for reducing the adverse environmental impacts of their business operations. Failure to provide space which achieves high standards of Environmental Performance may well result in a building being less desirable to rent or own and as a consequence have a negative impact on value.

In recent years the Government has developed a growing number of policy and legislative drivers focussed on encouraging carbon and energy reduction across the property industry. These include the CRC Energy Efficiency Scheme, mandatory carbon reporting, minimum energy performance standards, EPCs and amendments to the Building Regulations. Sustainable buildings and management practices which address the requirements of these various policies reduce both business risk and associated costs. They are also more attractive to occupiers and investors.

## Occupiers

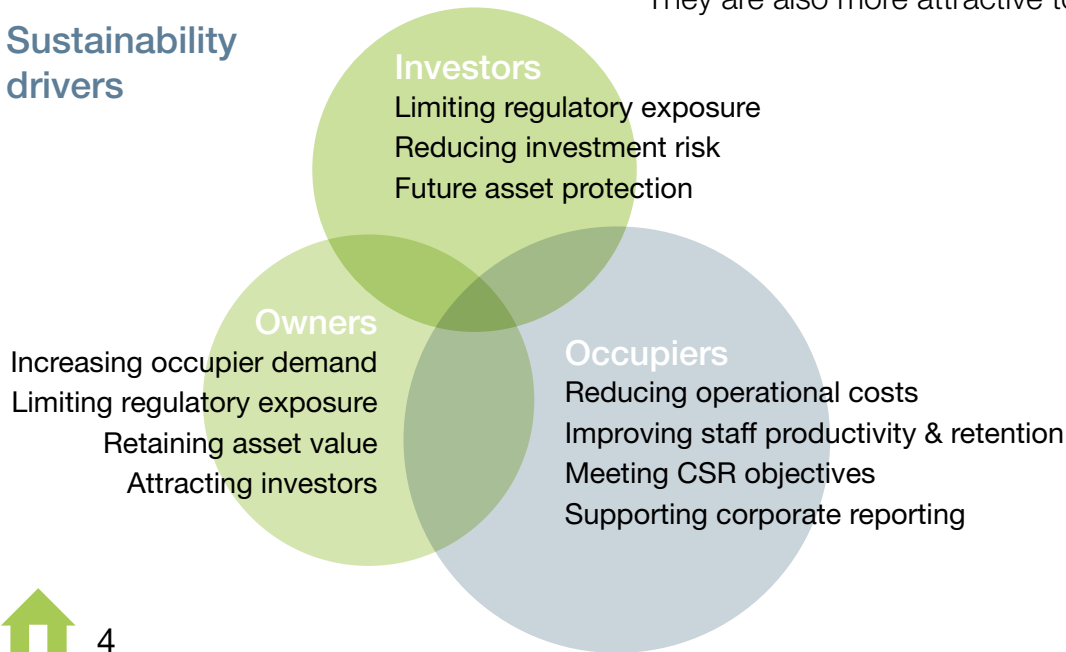
Occupiers are increasingly concerned about the environmental and social impacts of their business operations. The drivers for this include reputation risk, customer interest, attracting and retaining the best employees, limiting risk exposure, impacts of increasing environmental legislation and financial savings. In addition, some studies have highlighted the links between environmentally sustainable buildings and increased employee productivity and satisfaction.

Occupiers are also increasingly focused on their total property occupancy costs. This goes beyond rent and rates and includes service charges, utility costs (both current and forecasted) and any costs associated with environmental taxes. Environmentally sustainable buildings combined with efficient management will help support occupiers in reducing operational costs and delivering on sustainability commitments and policies, as well as providing a productive working environment for their staff.

## Investors and fund managers

Investors and fund managers are increasingly interested in the sustainability performance of the property funds in which they invest. Growth in environmental legislation coupled with the anticipated growing demand from occupiers for environmentally sustainable buildings presents a clear risk and exercises increasing influence on investment decisions. Property funds which can demonstrate that they have considered and addressed the Environmental Performance and sustainability aspects of their property portfolios, have built positive occupier relationships and can demonstrate an awareness of and an action plan to address current and forthcoming legislation, will clearly be considered to be a lower investment risk.

## Sustainability drivers



A comprehensive review of the benefits of more sustainable buildings is provided in the World Green Building Council Report [The Business Case for Green Building: A Review of the Costs and Benefits for Developers, Investors and Occupants](#)

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## Green lease principles

- 1 For new and renewal leases, owners and occupiers should try to include clauses similar to the [model form green leases clauses](#) provided in this Toolkit.  
  
As a minimum, these should include provisions regarding sharing of data and co-operation on improving Environmental Performance.
- 2 For existing leases, owners should try to reflect the [best practice recommendations](#) in their dialogue with occupiers. They may do so in a variety of ways, including discussion of these issues at meetings of any Building Management Group or Committee.
- 3 Owners and occupiers may choose to record, in an MoU, the environmental issues on which they decide to collaborate. This document is not legally binding and is designed to provide a cooperative framework within which the parties can agree both generic and specific actions on environmental and sustainability issues. It does not alter the terms of the lease. An MoU can be time limited or open ended.
- 4 The extent of any MoU should be agreed between the parties and be based on the [best practice recommendations](#). It should, however, be flexible, allowing for differences in the size, type and nature of the Building and existing sustainability commitments. [A model form MoU](#) is provided in this Toolkit.
- 5 An MoU will not bind subsequent owners or occupiers, but the original parties to the MoU should encourage their successors to adopt it or sign up to a similar document.





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# Best practice recommendations for owner occupier collaboration

Collaboration between an owner and occupier(s) can significantly improve the Environmental Performance of a building. The BBP recommends the following list of topics and actions for consideration. Not all will apply in all cases because individual circumstances will differ. The BBP considers that, as a minimum, owners and occupiers should look to agree ways in which they will share data and co-operate on improving Environmental Performance.

Further information on the subject areas listed below can be found in both the [BBP Managing Agents Sustainability Toolkit](#) and [BBP Transactional Agents Sustainability Toolkit](#).



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## Co-operation and sharing best practice

### Sharing information

- Energy and sustainability performance reports should be shared by owners and occupiers periodically.
- Owners and occupiers should make provision for sharing maintenance records for major services equipment in the Premises and the Building.
- Owners should consider producing a handbook or information pack which incorporates energy and environmental management information in relation to the Premises and the Building and supplying a copy of this to all occupiers in the Building.
- Owners, occupiers and Managing Agents should share and update contact information of individuals responsible for Environmental Performance.

### Working together

- Owners should be required to respond to reasonable co-operation requests from occupiers and vice-versa on issues related to the Environmental Performance of the Premises or the Building.
- Owners and occupiers should set joint targets in relation to the Environmental Performance of the Building e.g. energy and water reduction, recycling rates and an agreed target environmental rating e.g. Energy Performance Certificate (EPC).

### Forum for communication between owners and occupiers

- Owners and occupiers should agree a forum for discussion of issues related to Environmental Performance. This may take a variety of forms depending on the size, nature and complexity of the Building. It may range from a simple telephone conversation, an agenda item on an existing occupier liaison forum or a face to face meeting of a specially designated committee (perhaps called a Green Building Management Group).

- The forum should communicate periodically to:
  - > Ensure effective communication of operational performance data.
  - > Set and review an environmental management plan for the Building including specific targets.
  - > Ensure maintenance and cleaning services are aligned with sustainability targets.
- The forum should include:
  - > Owner representatives.
  - > Occupier representatives.
  - > Where relevant, a representative of the building management team (for example, the Building Manager, Building Engineer or Managing Agent).
  - > Where relevant, other parties involved in the operation of the Building (for example, any Energy Manager, suppliers and cleaners).

For further guidance see the [BBP Green Building Management Toolkit](#).

### Promotion and training

- 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 Environmental Performance is important and where savings can be made.
- Occupiers should provide employees with training and education on sustainability issues and should communicate achievements on these issues to employees.





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## Energy

### Data sharing

- Owners and occupiers should share data on energy consumption.
- As a minimum, they should share annual consumption data. Data collection at a greater frequency will, however, allow for more meaningful understanding of performance.
- An industry accepted methodology or framework should be used to ensure consistency of data e.g. Display Energy Certificates (DECs), [GPA Common Sustainability Metrics](#), [LES-TER](#).

### 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 using advanced metering technology that can automatically send data on a half-hourly basis to both owners and occupiers. For further guidance see the [BBP Better Metering Toolkit](#).

### Energy audit

- An energy audit should be undertaken, the scope of which should be agreed between the owner and occupier(s).
- Energy consumption should be reviewed periodically to identify and address changes in operational performance, demonstrate the success of reduction strategies, identify problems and set future objectives.
- Consideration should be given to using third party specialist support and advice where no in-house expertise exists.

### Energy management

- Owners should develop a building energy strategy for multi-let buildings.
- Consideration should be given to the use of green energy tariffs.
- To avoid unnecessary use of plant and equipment, control times schedules and settings should align with the working hours of the occupier(s). A programme of regular reviews should also be introduced to ensure timely adjustments.

- Building occupancy should be recorded and reviewed against actual energy usage and Building Management System (BMS) settings (where a BMS exists). This allows unusual or excessive energy consumption during periods of low/zero occupancy to be identified.

### Lighting

- Owners and occupiers should install, where appropriate, motion and daylight sensors as part of any lighting control system.
- Energy efficient bulbs/luminaires should be installed e.g. T5 lamps and LEDs throughout the Premises or the Building.

### Maintenance

- Equipment should be well maintained and serviced in accordance with manufacturer's instructions and recommendations, to ensure optimum performance.
- Selection of replacement equipment should take into account the issues covered in the ['Works' section](#).

### On-site renewables and low carbon technologies

- Owners and occupiers should consider introducing renewable energy and low carbon technology where appropriate.
- Owners should consider favourably requests by occupiers 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 consider participating in, or initiating, local and/or communal energy schemes e.g. district heating/cooling networks with neighbouring buildings and consider installing individual building Combined Cooling Heat and Power (CCHP) where practicable.



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## Water

### Data sharing

- Owners and occupiers should share data on water consumption.
- As a minimum, they should share annual total water consumption data. Data collection at a greater frequency will, however, allow a more meaningful understanding of performance and will identify water loss through leaks and overflows more quickly.
- An industry accepted methodology should be used to ensure consistency of data e.g. [GPA Common Sustainability Metrics](#), [Carbon Trust Water Standard](#).

### Metering

- Separate metering facilities should be installed for individual occupiers (in a multi-let building) and major consumption areas e.g. kitchen areas, to monitor usage and identify leakages.
- Consideration should be given to using advanced metering technology that can automatically send data to both owners and occupiers. For further guidance see the [BBP Better Metering Toolkit](#).

### Water audit

- A water audit should be undertaken, the scope of which should be agreed between the owner and occupier(s). A water audit is a simple assessment of the water consumption and related equipment in a Building. It may be more cost effective to commission one in conjunction with an energy audit.
- Water consumption should be reviewed periodically to identify and address changes in operational performance, demonstrate success of reduction strategies, identify problems and set future objectives.
- Consideration should be given to using third party specialist support and advice where no in-house expertise exists.

## Water management

- Owners should seek to develop a building water strategy for multi-let buildings.
- Owners and occupiers should install, where possible, high efficiency plumbing fixtures and control technologies e.g. aerated taps, dual flush toilets, waterless urinals.
- A programme of regular leak inspections should be agreed.

### Grey water recycling and rainwater harvesting

- Treated and recycled water should, where possible, be used in applications where potable water is not a necessity.
- Landscaping irrigation systems should, where possible, be fed with captured rain water or grey water and employ appropriate water saving control systems.



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## Waste

### Data sharing

- Owners and occupiers should share data on the Building's waste streams by source, quantity and type.
- As a minimum, they should share annual waste data. Data collection at a greater frequency will, however, allow a more meaningful understanding of performance.
- An industry accepted methodology should be used to ensure consistency of data in respect of waste e.g. [GPA Common Sustainability Metrics](#).

### Waste audit

- A waste audit should be undertaken, the scope of which should be agreed between the owner and occupier(s).
- Waste data should be reviewed periodically to identify and address changes in waste streams, by source, quantity and type, to demonstrate the success of waste reduction strategies, to identify problems and set future objectives. This review should recognise 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.

### Waste management

- Owners should seek to develop building waste strategies for multi-let buildings. This includes the sharing of facilities between occupiers, so as to reduce waste vehicle journeys and collection charges.
- Owners should consider the possibility of developing joint waste strategies with neighbouring buildings.
- Occupiers should consider providing programmes for their employees to raise awareness of waste and recycling facilities.
- Adequate space and facilities for the storage of recyclable materials (paper, cardboard, glass, plastics, food waste etc.) should be made.

- All waste must be classified and managed in accordance with statutory requirements. Special recycling/disposal provisions should be made for electrical items, toner cartridges, fluorescent bulbs, mobile phones and batteries etc. to comply with relevant regulations.
- 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.

### Fit-out and refurbishment

Contractors used for fit out and refurbishment work at the Building should:

- Make adequate provision for waste segregation and recycling.
- Re-use materials where practicable.



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## Works

Where works are undertaken at the Premises or the Building, whether by the owner or occupier, the following principles should be followed:

- Works which adversely affect the Environmental Performance of the Premises or the Building should be avoided.
- Any proposed works to the Premises or the Building must comply with relevant legislation e.g. Building Regulations Part L and this should be demonstrated in any request for necessary consent to carry out those works.
- Occupiers should justify their energy needs when specifying energy load requirements in order to avoid inefficient use of equipment by operation below design point e.g. heating systems continuously operating at part load.
- A target sustainability rating should be established in advance of any major works e.g. BREEAM, LEED, Ska, EPC, DEC. A summary of these rating systems is provided in the [BBP Transactional Agents Sustainability Toolkit](#).
- When selecting replacement plant and equipment, the assessment of its suitability for purpose should include consideration of sustainable sourcing, future occupation densities of the Premises or the Building and whole-life costing. Simply replacing 'like for like' plant and equipment should be avoided where it is possible to use alternatives which will improve the Building's Environmental Performance. For example, when replacing a boiler, selecting one with a better energy rating or improving the Building's insulation so that a smaller boiler will suffice.
- Owners and occupiers should favourably consider alterations that reduce the need for air conditioning in the Building e.g. night time purging, free-cooling.
- Owners and occupiers should develop a plan for replacement of plant and equipment which takes the above factors into account, to avoid 'knee jerk', less well considered decisions following failure of the plant/equipment.
- Sustainability in sourcing, specification, performance, recycling and suitability for purpose should be considered for all works to the Premises or the Building.

## Transport

- Owners and occupiers should co-operate with each other to produce a Green Travel Plan.
- Owners and occupiers should co-operate with each other to provide space for on-site bicycle storage, shower and changing facilities for cyclists and spaces for other more sustainable modes of transport. Consideration should be given to the provision of electric vehicle charging points.
- Owners and occupiers should consider establishing shuttle links to local public transportation hubs.

## Biodiversity

- Owners and occupiers should assess opportunities:
  - > to improve biodiversity in and around the Building.
  - > to install appropriate habitats to encourage local wildlife.
  - > for providing green/brown roofs and/or living walls.

## Re-instatement

- Owners should consider waiving occupiers' obligations to reinstate alterations at the end of the lease where those alterations help to improve the Environmental Performance of the Premises and/or the Building.



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## Service provision

### Sustainable procurement

- Owners and occupiers should work together to ensure that contractors and on-site staff operate in line with any sustainable procurement policy in place at the Building. This may include maintenance, security and cleaning staff.

### Managing Agents

- Managing Agents should be contractually required to monitor/ implement the requirements of any green lease clauses and/or any MoU in place. For further guidance see [BBP Managing Agents Sustainability Toolkit](#).

### Cleaning (both owner and occupier areas)

- Cleaning contractors should be required to comply with any energy, water and waste management policies in place at the Premises or the Building and use solvent-free and hydrocarbon-free cleaning products.
- Cleaning contracts should specify appropriate cleaning and maintenance procedures for specialist equipment/products e.g. waterless urinals.
- Owners and occupiers should provide awareness-raising and training programmes on relevant environmental policies for cleaning contractors.
- Consideration should be given to the timing of cleaning operations in order to minimise, where possible, the use of resources e.g. lighting, heating or cooling.

## Service charge reporting

- Where possible, owners should separately identify in service charge accounts:
  - > Costs incurred by and associated savings from environmental improvement initiatives.
  - > Costs incurred and related performance data on the energy consumption of shared services and common parts of the Building.

## Confidentiality of data

- The purpose of any data collection and use/disclosure of such data should be formally agreed between the owner and occupier(s).





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## Model form green lease clauses

This section sets out model form green lease clauses, designed for inclusion in new or renewal leases to support the parties who agree that the Building should be run in an environmentally sustainable way. The extent to which such clauses should be included in the lease will be determined by

- How 'green' the parties want the lease to be. This ambition will vary considerably. The draft clauses set out what the BBP considers necessary to achieve a minimum level of environmental sustainability. For some clauses the BBP has sign-posted alternative or more challenging provisions which could be included.
- The other circumstances of the transaction, such as the age and nature of the Building, whether it is single or multi-let, and the proposed use of the Premises.

The draft clauses and accompanying notes are a guide to the key issues. They are not designed to be a substitute for legal advice. When considering a new lease or on lease renewal, the BBP suggests that parties discuss with their advisers what their level of ambition is, which of the draft clauses they wish to include and whether they wish to go even further.

The draft clauses are designed for new leases/ lease renewals for multi-let office buildings. They therefore refer to the Premises (being the floor or area demised by the lease) and the Building (being the whole building). Some of the suggested clauses would 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) but the drafting would need to be adapted.

Besides the draft clauses, there are other environmental/ sustainability topics which the parties may wish to consider including in the lease. For example:

- Obliging the parties to adopt a particular recycling regime and/ or to observe both local government requirements for refuse and recycling and any refuse management strategy adopted by the landlord.
- Obliging the parties (so far as practicable) to use materials from sustainable sources in any works they undertake in the Premises/Building.

- Imposing on the parties a duty to adopt rainwater harvesting or low water use solutions.
- Widening the normal prohibition on use of hazardous substances.
- Permitting the installation of alternative energy sources e.g. PV panels, wind turbines or Combined Cooling Heat and Power (CCHP) plant.
- Wider provisions in the service charge for works which can be done and charged for.

It is possible that sustainability and environmental issues will also be addressed in other documents which affect the relationship between the parties, such as any Tenant's fit out handbook, Landlord's regulations or Building handbook which the Tenant may covenant to observe. The parties should ensure that the draft clauses are consistent with these documents.

### Costs, savings and additional income

The BBP makes no recommendations as to how the costs of installing equipment or making other physical changes to the Premises or the Building in order to improve the Environmental Performance will be borne or how any savings or additional income (such as feed-in-tariffs for on-site generation) associated with such works should be allocated. The BBP's view is that these are matters for the parties to discuss and agree as appropriate to their circumstances and reflect in the appropriate provisions in the lease which deal with recharging such costs (for example, the service charge provisions).

In particular, the BBP recognises that the allocation of costs associated with the CRC Energy Efficiency Scheme (CRC) remains controversial. Many leases now provide for Landlords to recover some or all of the costs related to CRC, but there is a lack of consensus on this issue between Landlords and Tenants. Landlords who are unable to recover CRC costs from Tenants may have a greater incentive to adopt these draft clauses, in order to help mitigate the energy footprint of the Premises/Building. Similarly, Tenants who are required to contribute to CRC costs should benefit where both parties agree to green lease clauses because they are designed to improve the Environmental Performance of the Premises/Building; this may include reduction of CO<sub>2</sub> emissions, which will reduce the CRC costs.



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## Definitions

The green lease clauses can be shorter if they use defined terms.

### Suggested drafting

**Environmental Performance** means all or any of the following arising from the operation or use of the Premises and/or the Building:

- (a) Energy consumption
- (b) Water consumption and discharge
- (c) Waste generation and management
- (d) Generation and/or emission of greenhouse gases
- (e) Other adverse environmental impacts

References to “improvement in Environmental Performance” shall include all or any of the following

- (a) Reduction in or improved efficiency of energy consumption, including selection of alternative sources of energy with a lower environmental impact
- (b) Reduction in generation and/or emission of greenhouse gases
- (c) Reduction in or improved efficiency of water consumption or discharge
- (d) Reduction in waste generation
- (e) Improvement in the rate or efficiency of waste recycling or reuse of resources
- (f) Reduction of other adverse environmental impacts

in each case, taking into account any changes in the use or intensity of use of the Premises and/or the Building (and “improve the Environmental Performance” shall be construed in like manner).

**Environmental Performance Data** means data in respect of energy consumption, water use and discharge, waste production and recycling relating to the Premises and/or the Building.

**EPC** means an Energy Performance Certificate as defined in Regulation 2(1) of the Energy Performance of Buildings (England and Wales) Regulations 2012 (SI 2012/3118).

**Recommendation Report** means a report as defined in Regulation 4 of the Energy Performance of Buildings (England and Wales) Regulations 2012 (SI 2012/3118).



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### Co-operation obligation

The success of a green lease relies as much upon the actual co-operation between the parties or their representatives, as the existence of strict legal obligations. Setting out the shared aim of the parties to improve the Environmental Performance of the Premises and/or the Building may assist by:

- Setting the framework against which other green lease clauses can be interpreted and applied in a purposive manner.
- (Where more detailed/onerous green lease clauses prove unacceptable) providing a lightweight minimum regime within which the parties can raise issues and foster discussion on environmental sustainability issues.
- Providing a background against which to consider the validity and recoverability of costs incurred on achieving sustainability objectives and/or the validity of the grant or withholding of consent to works (which may be required by other clauses in the lease).

### Suggested drafting

#### The Landlord and the Tenant

- (a) Confirm that [wherever reasonably practicable] they wish to promote and improve the Environmental Performance of the Premises and the Building
- (b) Agree [in good faith but without legal obligation] to co-operate with each other to identify appropriate strategies for the improvement of the Environmental Performance of the Premises and the Building

#### Drafting note

*These clauses do not impose any meaningful legal obligation. At best, the first is a statement of intent at the time it is made. The second, even without the optional wording, imposes only a duty to co-operate, not necessarily to agree to any particular strategy. Because they are so lightweight, these clauses may be acceptable even to the most reluctant of participants in a green lease.*



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## Building management group

In order to run the Building in a sustainable way, communication between the parties is critical and must occur as often as reasonably necessary between the appropriate members of the Landlord's staff (and/or Managing Agent) and the Tenant's staff. A Building Management Group (BMG) can be a useful forum and discipline for such communication. The BMG may deal only with green issues (a Green Building Management Group). Alternatively, it may be more convenient and effective for green issues to be one of the items discussed at the general Building Management Group which has a wider remit.

Where the parties are effectively communicating on environmental matters by more informal means, it may not be necessary to have regular meetings of a BMG. The drafting of this clause permits such informal contact methods.

Even if the contact method will be informal, it is still useful to have such a clause so as to impose an obligation on un-cooperative parties to at least be available for discussion in the hope this may lead to further engagement and progress. The draft clause does not specify a minimum frequency for the meetings of the forum, because of the informal (and, by nature, varied) methods of contact. The parties may want to introduce a minimum pattern for meetings, perhaps quarterly, leaving fluid the means by which that meeting is to be held.

The [BBP's Green Building Management Toolkit](#) provides useful guidance on the establishment and effective operation of a BMG.

### Suggested drafting

The Landlord will provide a forum to

- (a) Consider the adequacy and improvement of data sharing on energy and water use, waste production and recycling
- (b) Review the Environmental Performance of the Premises and/or the Building
- (c) Agree targets and strategies to improve the Environmental Performance of the Premises and/or the Building

on a regular basis.

This forum may take the form of a building management group which meets in person, but alternative appropriate means of communication and/or exchange of views shall be acceptable.

The Landlord and the Tenant will each nominate a suitable person to participate on their behalf in the forum, and will use reasonable endeavours to ensure that that nominee attends or participates in any forum meetings or discussions of which appropriate advance notice has been given.

The Landlord and the Tenant may agree that other third parties may participate in the forum, for a specified period and/or for a specified purpose.

[The Landlord will use reasonable endeavours to ensure that [a representative of] the Managing Agent attends or participates in any forum meetings or discussions of which appropriate advance notice has been given].

Where any of the issues considered, reviewed or agreed in the forum relate exclusively to the Premises, either the Landlord or the Tenant may request that these are also discussed between them and their authorised agents only (and not with any other permitted participants in the forum).

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## Data sharing and metering

The BBP considers that it is crucial to share data about the utilities consumption and waste generated by the occupation of the Premises and the Building. Without this it is impossible to plan strategies for improvement in Environmental Performance. The parties should therefore be obliged to share their relevant data.

In some cases, a multi-let Building may already have in place at the time of letting, provision for separate measurement of the energy and water supplied to each demise in that Building, as well as the supply to the Building as a whole (or even separate measurement of the supplies to the common parts). This system may allow the Landlord to gain access to the data for the Premises without involving the Tenant (for example, because the meter is situated in the common parts or can supply remote readings). However, this is not always the case, so the data sharing clause will be needed (just as it will for data on all other types of supplies).

In other cases, at the time of letting, there may be only one meter for the Building and either party may want to explore the option of a separate meter for the Premises, or at least a sub-meter or check meter, in order to monitor supplies to the Premises and obtain accurate measurements. In addition, either party may want to explore opportunities to change the existing meters for something more sophisticated. This may be because they want better information from the meter (for example a plot of the energy consumption over half hourly periods, to spot spikes in consumption, or a division of consumption between different types of use). Alternatively, the Tenant may want to establish its own energy supply for the Premises, where it is the direct customer of the utility company. To achieve this, a separate main fiscal meter may need to be installed. For definitions of the types of meter and more information on metering generally and the various benefits, see the [BBP Better Metering Toolkit](#).

Generally the Landlord will be able to do works to meters freely, where they are situated in the common parts of the Building. It will not need the consent of the Tenant to do the work (though it may not be able to recharge the cost, and may have to plan the timing so as not to breach any obligation to provide services to the Premises at all times).

Tenants, however, will normally need consent to do such works to meters in the Premises, and/or to access parts of the Building outside the Premises in order to do the works. The easements typically granted in a lease would not confer such rights. The Landlord may not want to grant such rights in advance, but instead to consider them when and if the Tenant makes a request to do the works. The draft clauses include an optional extended easement.

The draft clauses cover:

- Sharing of all types of data
- Rights of access to install meters. These may be unnecessary if the easements granted or reserved by the lease are wide enough already (this should be checked). However, even where they appear wide enough, the parties may still want to include express rights, just for clarity. The draft clause gives the Landlord (but not the Tenant) the right to install fiscal meters. Both have rights to install sub-meters or check meters.

### Suggested drafting

#### Data Sharing

The Landlord and the Tenant will share the Environmental Performance Data they hold relating to the Premises and/or the Building. This Environmental Performance Data will be shared on a regular basis [but not less frequently than monthly/quarterly/annually] with each other, with the Managing Agent and with any third party who the Landlord and the Tenant agree needs to receive such data.

Save where they are under a statutory obligation of disclosure, the Landlord and the Tenant will keep confidential the Environmental Performance Data shared under this clause, and will only use such data for the purposes of

- monitoring and improving the Environmental Performance of the Premises and/or the Building and/or
- measuring the Environmental Performance of the Premises and/or the Building against any agreed targets

The Landlord will procure that the Managing Agent is placed under a similar obligation to that set out in clause [ ] to keep any shared data confidential and to use it only for the purposes listed in that clause.

Where the Landlord or Tenant discloses any shared data to a third party, they will procure that that third party is placed under a similar obligation to that set out in clause [ ] to keep any shared data confidential and to use it only for the purposes listed in that clause.





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## Suggested drafting (continued)

### Metering

#### Landlord's option

The Landlord may [at its own cost] install equipment (whether fiscal meters, sub-meters or check meters or other equipment) to measure the supply of gas, electricity or other energy or utility supplied to the Premises [and the Landlord and/or its agents shall have the right to enter and remain on the Premises (with workmen, contractors, and necessary equipment) at reasonable times in order to carry out such works provided that

- (a) reasonable prior notice [in writing] is given by the Landlord to the Tenant of such proposed entry
- (b) installation of the equipment will not adversely affect the Tenant's beneficial use and occupation of the Premises [to any material extent]
- (c) the Landlord makes good, at its own expense, promptly and in a good and workmanlike manner, any damage to the Premises caused by the carrying out of such works]

#### Tenant's option

The Tenant may [choose one of these options]

#### OPTION A

Request the Landlord to install (at the Tenant's expense) a sub-meter or check meter to monitor the supply of gas, electricity or other energy or utility supplied to the Premises. The Landlord shall, where the installation is reasonably practicable, and the Tenant has made available the necessary funds, carry out or procure the carrying out of such works within a reasonable time and in a good and workmanlike manner.

#### OPTION B

Install (at its own expense) within the Premises a sub-meter or check meter to monitor the supply of gas, electricity or other energy or utility supplied to the Premises provided that

- (a) the carrying out of such works shall neither impair the continuity of supply nor have any long term adverse effect on the supply of gas, electricity or other utility to the remainder of the Building
- (b) the consent of the Landlord (if required under clause [the alterations clause]) is first obtained
- (c) the carrying out of such works will not cause a breach of the terms of supply to the Building of gas, electricity or other utility as the case may be

#### PLUS (possibly)

[Where the Tenant requires access to the common parts of the Building in order to carry out such works, the Tenant and/or its agents shall have the right to enter and remain upon those common parts (with workmen, contractors and necessary equipment) at reasonable times to carry out such works provided that

- (a) reasonable prior notice [in writing] is given by the Tenant to the Landlord of such proposed entry
- (b) installation of the equipment will not adversely affect the use and occupation of those common parts by those entitled to use them, nor the supply of services to the Building or any part thereof other than the Premises
- (c) the Tenant at its own expense makes good promptly and in a good and workmanlike manner any damage to the common parts or the Building caused by the carrying out of such works]



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## Extending the Landlord's rights to do works

This clause ranges more widely than, and is additional to, the preceding draft clause in this Toolkit (which deals only with the Landlord's right to install metering equipment). There may be circumstances where the Tenant is happy with the metering clause, but not with this clause.

This clause is designed to deal with a situation where the Landlord and the relevant Tenants in the Building cannot agree (through the BMG or other forum) on the works to be done to improve Environmental Performance of the Building, yet the Landlord is convinced of the wisdom of carrying out the works and wishes to carry them out. These may be works in the common parts (for example, installation of improved insulation), to plant and

equipment serving the whole Building or only one particular part (for example, a replacement boiler), or even works within the Premises.

The BBP considers that it is important for the Landlord to have the option (but no obligation) to carry out such works unilaterally. The drafting does not seek to deal with how the cost of the works will be borne. The BBP believes that in most cases they will be improvement works and may well not fall within the recoverable costs under the service charge provisions within the Lease. If the Landlord expects to recover the costs, it should check these provisions to see whether they will fall within a recoverable head of expenditure. Conversely, the Tenant should check these provisions to ensure that it will not face unexpected expenditure.

### Suggested drafting

The Landlord and/or its agents may (on giving reasonable prior notice to the Tenant) enter and remain on the Premises (with workmen, contractors and necessary equipment) at reasonable times for any of the following purposes:

- 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
- carrying out [at the Landlord's expense] works [which are agreed by the Tenant (acting reasonably) and are] intended to improve the Environmental Performance of the Building (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 Premises)

The Landlord shall make good [at its own expense], promptly and in a good and workmanlike manner, any damage caused to the Premises by the carrying out of such works.

[The Landlord shall be entitled to carry out works to the Common Parts and the plant and equipment serving the Building, which are intended to improve the Environmental Performance of the Building notwithstanding any interruption in the provision of services by the Landlord provided always that the Landlord shall use reasonable endeavours to minimise any disruption to the Tenant and any interference with services it has covenanted to provide].

### Drafting Note

*The Landlord's rights of access to, and to carry out works within, the Premises are generally limited and may not permit entry to carry out improvements which improve the Environmental Performance of the Building. The lease should be checked to see whether it already contains sufficient rights to enable the Landlord to review and measure in this way, or to carry out such improvements. These rights may appear in the reservations to the Landlord, in the Tenant's covenants to permit access and/or in the Landlord's covenants to provide services. If not, then the first part of this draft clause should be used to confer the necessary rights. The draft contains optional wording which would require the Landlord to seek Tenant's prior consent before doing the work. Landlords may want to omit this wording as it will make it difficult to carry out environmental improvements. The remainder of the draft clause should provide sufficient safeguards for the Tenant (though the issue of recharging of costs will need to be checked if the Tenant does not expect to pay).*

*Generally a Landlord would be free to carry out improvement works to the common parts or common plant and equipment without restriction, because nothing in the lease prohibits what it does to its parts of the Building. However, where the Landlord is obliged to provide services, carrying out the improvement works may interrupt this in a manner than is not authorised by the lease. In such circumstances the last part of this clause will permit the Landlord to do the work notwithstanding the interruption to services.*





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## Restriction on the Landlord's right to do works

### Suggested drafting

Choose from one of the following:

#### Absolute prohibition

The Landlord shall not carry out any works to the Building or to the plant, equipment or services within and serving the Building which [may/will] adversely affect the Environmental Performance of and/or any EPC rating of the Premises and/or the Building.

#### Qualified prohibition

The Landlord shall not carry out any works to the Building or to the plant, equipment or services within and serving the Building which [may/will] adversely affect the Environmental Performance of and/or any EPC rating of the Premises and/or the Building unless it first obtains the [written] consent of the Tenant to such works [such consent not to be unreasonably withheld or delayed].

#### Lightweight duty to consider Tenant's views

The Landlord will consider any reasonable suggestions made by the Tenant to [avoid/minimise] any potential adverse effect on the Environmental Performance of and/or the EPC rating of the Premises or the Building of any works which the Landlord proposes to carry out.

### Drafting Note

*Usually the Landlord will be under no constraints as to the works that it can do to the Common Parts of the Building or to the plant and machinery that serves the Building as a whole (except the practical constraint that the lease may not permit the Landlord to recharge to the Tenant the costs incurred). Sometimes (particularly if the cost can be recharged) the Tenant will want to prevent the Landlord acting in a way that prejudices the Environmental Performance or the EPC rating of the Premises or of the Building. The Landlord may only be prepared to agree to this for particular types of work, or for works over a particular value.*

*This draft clauses offer different levels of obligation. It is likely that the Landlord will prefer the last, very lightweight obligation. This imposes no obligation on the Landlord to tell the Tenant what works it is proposing, and the Landlord need only consider the Tenant's suggestions, not necessarily implement them.*



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## Changes to the Tenant's freedom to make alterations

Tenant's alterations have the potential to adversely affect the Environmental Performance of the Premises or the Building. The BBP considers that restrictions should be imposed on the Tenant to prevent works which have such an effect.

### Suggested drafting

#### Restrictions on the Tenant's alterations

Choose from one of the following depending on what regime is imposed by the normal alterations clause:

##### Absolute prohibition

The Tenant shall not carry out any alterations to the Premises or to the plant, equipment or services within and serving the Premises which [may/will] adversely affect the Environmental Performance of and/or any EPC rating of the Premises and/or the Building.

##### Qualified prohibition

The Tenant shall not carry out any alterations to the Premises or to the plant, equipment or services within and serving the Premises which [may/will] adversely affect the Environmental Performance of and/or any EPC rating of the Premises and/or the Building unless it first obtains the [written] consent of the Landlord to such alterations [such consent not to be unreasonably withheld or delayed].

##### Weaker constraint (where the Tenant has greater freedom, under the lease, to make alterations)

Before making any alterations to the Premises or to the plant, equipment or services within and serving the Premises which alterations [may/will] adversely affect the Environmental Performance of and/or any EPC rating of the Premises and/or the Building the Tenant shall

- (a) provide sufficient information to the Landlord in writing and wait a reasonable period before commencing the works so as to enable the Landlord to assess the potential adverse effects of the proposed alterations
- (b) consider [and, where reasonable, implement] any [reasonable] suggestions which the Landlord makes to [avoid/minimise] any such potential adverse effects of the proposed alterations

##### Weakest constraint (where the Tenant has very few limitations on the alterations it can make)

Where the Tenant carries out alterations to the Premises or the plant, equipment or services within and serving the Premises, which alterations [may/will] affect the Environmental Performance of the Premises and/or the Building, the Tenant shall provide promptly such information about the alterations as the Landlord shall reasonably require.

##### Drafting Note

*The clause presupposes that the lease permits the Tenant to carry out works to the Premises subject to specified constraints (typically a prohibition on structural works, and/or a requirement for landlord's consent to most alterations, such consent not to be unreasonably withheld). Sometimes the lease may give the Tenant much wider freedom to make alterations. It is important first to check what the other alterations provisions in the lease require/permit, and then to judge whether additional constraints on works which adversely affect Environmental Performance are necessary at all, and, if so, how to dovetail them. Perhaps, where the Landlord's consent is required to alterations, the Landlord may be willing to rely on an argument that an adverse effect on Environmental Performance is a reasonable ground to refuse consent.*

*In the third option, the Tenant is merely required to consider suggestions made by the Landlord to avoid or minimise the adverse effect of the proposed alterations. The Landlord might want to change this to an obligation to implement those suggestions, possibly limited to where the suggestions are practically and economically feasible.*

*The fourth option merely provides the Landlord with information on what alterations have been done, not the ability to prevent them being done.*

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Suggested drafting (continued)

**Expansion of the Tenant's ability to do alterations which improve the Environmental Performance**

The Tenant may, with the Landlord's consent (which shall not be unreasonably withheld) carry out alterations to the Premises which [are designed to/will] improve the Environmental Performance of the Premises and/or the Building, provided that such alterations

- (a) will not adversely affect the performance or the life cycle of any mechanical or electrical services, or any other plant, equipment or services in the Building and
- (b) are not structural alterations

**Drafting Note**

*This clause will be unnecessary where the Tenant has freedom to make any alterations with the Landlord's prior consent, not to be unreasonably withheld.*



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## Energy Performance Certificates (EPCs)

### Suggested drafting

#### Restriction on alterations

Choose either of the following options (and, if choosing the second option, check that the normal alterations clause provides for the Tenant to give the Landlord copies of the plans and specification for any alterations so that the Landlord can judge whether to give consent).

#### Absolute prohibition

The Tenant shall not carry out any alterations to the Premises or to the plant, equipment or services within and serving the Premises which [may/will] adversely affect any EPC rating of the Premises and/or the Building.

#### Qualified prohibition

The Tenant shall not carry out any alterations to the Premises or to the plant, equipment or services within and serving the Premises which [may/will] adversely affect any EPC rating of the Premises and/or the Building unless it obtains the prior [written] consent of the Landlord to such alterations [which consent shall not to be unreasonably withheld or delayed, provided that the Landlord shall not be held to be acting unreasonably in refusing consent if it reasonably considers that the proposed alterations will have an adverse effect on the EPC rating of the Premises or the Building].

#### Drafting note

*These clauses do overlap with those relating to Tenant's alterations (earlier in this Toolkit), however, the BBP envisages situations where the Tenant's alterations clause in this Toolkit may prove unacceptable, but the EPC clause is accepted. As the implications of a reduced EPC rating (under the Energy Act 2011) on re-letting could become very extensive, the BBP considers it important that this particular restriction should be achieved by one or other method. If both clauses are included, then any duplicated wording can be safely deleted, should either party request this.*

#### Provision of details of new EPC

The Tenant shall comply promptly with any statutory duty to produce a new EPC (whether for the Premises or the Building) arising as a result of works carried out by the Tenant and shall [notify the Landlord of the unique identifying number of each new EPC so issued] [supply to the Landlord, promptly

following receipt by the Tenant of the necessary details, of a copy of each such new EPC when entered on the EPC register].

#### Drafting note

*If the lease contains a clause requiring the Tenant to observe its statutory obligations, the first part of this sub-clause is strictly unnecessary. The second part (notification of the identifying number or supply of a copy of the EPC) is also unnecessary if the Landlord is prepared to rely on its ability to search the EPC register at any time, free of charge, by using the address of the Premises. However, the Landlord may like the reassurance of having the number to hand (in case looking it up on the register is difficult). If the Landlord opts for the supply of a copy of the EPC by the Tenant, it should not necessarily rely on that copy in the future as elements of it may change (particularly if the Premises have become subject to a Green Deal). The Landlord should always check the latest version on the EPC register.*

#### Co-operation in production of an EPC

The Tenant shall co-operate with the Landlord so far as is reasonably necessary to allow the Landlord to obtain any EPC and Recommendation Report for the Premises or the Building [including providing the Landlord with copies of any plans or other information held by the Tenant that would assist in obtaining that EPC] and shall allow such access to any energy assessor appointed by the Landlord as is reasonably necessary to inspect the Premises for the purposes of preparing any EPC and/or Recommendation Report for the Premises or the Building.

#### Drafting note

*This clause is unnecessary where the Landlord is organising an EPC/Recommendation Report in order to comply with obligations under the EPC Regulations to supply or display one (because there is a duty to co-operate imposed by the EPC Regulations). However, it will be useful where the Landlord has chosen to update the EPC, or commission one for a different part of the Building, without being under obligation to do so (for example where the Landlord just wants to update the EPC to reflect changes that it has made which will improve the rating, but there is no planned sale).*





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## Reinstatement of Tenant's alterations

The BBP recognises that blanket requirements for removal of Tenant's alterations can lead to unnecessary waste and inefficiencies. It also recognises that where the Landlord judges it necessary for the re-letting of the Premises, the Landlord should not be prevented from requiring the Tenant to remove those Tenant's alterations which the Landlord considers necessary in order to present the Premises in a state it deems appropriate for re-letting.

Each time the Tenant requests Landlord's consent to alterations, the parties should consider Environmental Performance when deciding whether to relax the usual requirement to reinstate all Tenant's alterations, and the terms of that relaxation. As it is difficult, at the time of consenting to the works, to foresee what reinstatement the 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 where such reinstatement would adversely affect the Environmental Performance of the Premises or the Building unless such reinstatement is reasonably required by the Landlord having regard to its intentions in respect of the use or re-letting of the Premises or the Building after the expiry or sooner determination of the term.

## Rent review

Where the draft clauses give either Landlord or Tenant the right to carry out works aimed at improving Environmental Performance, questions arise as to the treatment of such works on rent review. The BBP 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) Any works carried out by the Tenant carries at its own expense, 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 a right to carry out such works at its own cost and those works reduce utility bills or improve the Environmental Performance of the Premises or the Building, any benefit which such savings would have on the open market rental value of the Premises should be taken into account on review. For the avoidance of doubt this drafting should only capture increases in open market rent and should not seek to rentalise the Landlord's capital expenditure.

The parties should consider what agreement they can reach on these issues. If nothing can be agreed, the BBP would still recommend the inclusion of the draft clauses "Extending the Landlord's rights to do works" and "Changes to the Tenant's freedom to make alterations" 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 Environmental Performance of the Premises or the Building and where this impact in turn has a negative impact on the rental value of the Premises, the BBP considers that the negative impact of such alterations should be disregarded on rent review. 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.

## 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.



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## BREEAM

Where a Landlord/developer is building a new property, it often aims for that new build to be awarded a particular BREEAM “New Construction” rating, for example “Good”, “Excellent” or “Outstanding”. This is because it anticipates that that rating will be important in attracting potential Tenants, or commanding a better rent or to meet its own corporate targets. Conversely, a Tenant may have strong policies on selecting only buildings with high environmental credentials. It is, therefore, important that the award of that BREEAM rating is not compromised by the fitting out works which the Tenant does. This is particularly true where it is a ‘shell and core’ building, so that the fitting out works by the Tenant will encompass several of the elements which are assessed as part of the rating (such as plant and equipment e.g. lighting, air conditioning systems etc.).

The BREEAM “New Construction” rating is assessed at two stages in the project's life. At “design” stage (usually before construction has started) the assessment is based on the design drawings, calculations and specification. It results in an interim BREEAM rating. When practical completion of the works is achieved, this interim rating is reviewed, based on what has actually been constructed. This is called the “Post Construction” stage and may result in confirmation of the interim rating or a change to that rating. For some elements of the BREEAM rating, this post-construction assessment will be based on written evidence (for example, the as built drawings and specification); for others there will be a post-construction inspection.

For a shell and core building, when the Landlord's works are complete, the Building may still lack building services and materials which form part of the BREEAM assessment, because these are to be installed by the Tenant as part of its fitting out works. Here the BREEAM scheme allows the assessor to award a rating based on:

- What has been done by the Landlord/developer to shell and core stage, and
- What is to be done by the Tenant to take the Building from that stage to completion (i.e. its initial fit out).

Details of how this is done are set out in [Appendix D of the BREEAM New Construction Scheme \(Technical Manual SD5073\) \(2011 version\)](#).

When evaluating the elements of the Tenant's fit out that must be assessed in order to award the BREEAM rating, the assessor is usually entitled to look at either:

- The specific contractual obligations which the Tenant is placed under, so far as its fitting out works are concerned. These would usually appear in the agreement for lease, though in some cases, they might appear in the lease itself, or the licence for alterations (if the lease is granted at the point of achievement of shell and core completion). If these contractual obligations require the Tenant to achieve the necessary standards for all the BREEAM elements that are relevant to that Building (and, in a multi-let building, if at least 75% of the net lettable floor area of that Building is covered by such contractual obligations) then full BREEAM credits will be awarded for those elements. Ideally these contractual obligations should make very clear the particular BREEAM issues (by credit reference) which the Tenant is required to observe, as this makes it much easier for the assessor to spot the compliance with the requirements of the scheme.

Although the BREEAM scheme documents describe this option as being the use of Green Lease Agreements, this does not imply compulsory inclusion of the obligation in a lease, nor use of any particular wording in any document, nor clauses relating to the ongoing use and management of the building, once it is complete and the lease is granted. So it does not infer that green lease clauses (as described in this Toolkit) must be used, or in any particular format.

If contractual obligations exist which require the initial fit out works to adhere to the relevant BREEAM standards, then the BREEAM credits should be awarded. The actual fit out works may not be inspected to see whether those standards were achieved.

- Where there are no contractual obligations placed on the Tenant, then any generic guide which the Landlord/developer supplies to its tenants, which describes the standards to be achieved by Tenants in their initial fit out, in order to comply with the relevant BREEAM issues for the Building. Since this encourages achievement of the necessary standards (but imposes no obligation to do so) only half the available credits will be awarded for these elements. Not all BREEAM elements are eligible for consideration on this basis.



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- Where there are neither contractual obligations nor a generic guide, the assessor is able to look to the de facto co-operation between the Landlord and the Tenant if this results/has resulted in the achievement of the necessary BREEAM standards. The assessor will be provided with copies of the relevant fit out plans and specifications for the “Design” stage of the assessment, and as built evidence (including the assessor’s site inspection) for the “Construction stage”. If this evidence is satisfactory then full credits can be awarded.

For this reason, any agreement for lease (or lease/licence for alterations, if there is no agreement for lease, and these alternative documents deal with initial fitting out works) should oblige the Tenant to comply with the relevant BREEAM criteria. This clause will need to be tailored to the particular building, works and split of works between the parties.

Once the initial BREEAM “New Construction” rating has been awarded, it cannot be prejudiced by the works carried out by the Tenant in any subsequent alterations. So there is no need to include in the lease a restriction on the Tenant carrying out alterations that might prejudice the initial BREEAM rating.

There is an optional regime for certification under BREEAM of the “In Use” rating of a Building. This is something which either the occupier (the Tenant) or the Landlord can choose to undertake. It may result in a different rating from the original “New Construction” rating, but if it does, this does not prejudice the original “New Construction” rating. There is no longer (as at March 2013) any requirement under the BREEAM scheme for buildings with a “New Construction” rating of ‘Excellent’ or ‘Outstanding’ to have a regular In Use BREEAM rating, nor to achieve any particular “In Use” BREEAM rating. There is therefore no need, in the lease, to place the Tenant under any obligation to achieve or retain a particular “In Use” BREEAM rating.

#### Suggested drafting for Agreement for Lease (or Lease if no Agreement for Lease)

The Tenant shall procure that its Fitting Out Works comply fully with the following requirements of the BREEAM New Construction Scheme current at the date the works are carried out:

[set out in detail, preferably using the BREEAM credit reference, the elements of the work that the Tenant will be carrying out]

#### **Drafting note**

*If the parties do not wish to list the particular elements, then they may choose an alternative form of clause that requires compliance with a generic Fit Out Guide for the building (which is supplied to all Tenants). This obligation (albeit benchmarked by a generic guide) will suffice for award of full credits under the scheme.*



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# Model form Memorandum of Understanding

This section provides both owners and occupiers with a flexible model form MoU incorporating the best practice recommendations as the appendix. It can be entered into by the parties at any point during the lifetime of the lease.

The MoU uses the following terminology:

- Building:** the building in which the Premises are situated
- Environmental Performance:** all or any of the following arising from the operation or use of the Premises and/or the Building:
- (a) Energy consumption
  - (b) Water consumption and discharge
  - (c) Waste generation and management
  - (d) Generation and/or emission of greenhouse gases
  - (e) Other adverse environmental impacts

- Improvement in Environmental Performance:** includes all or any of the following
- (a) Reduction in or improved efficiency of energy consumption, including selection of alternative sources of energy with a lower environmental impact
  - (b) Reduction in generation and/or emission of greenhouse gases
  - (c) Reduction in or improved efficiency of water consumption or discharge
  - (d) Reduction in waste generation
  - (e) Improvement in the rate or efficiency of waste recycling or reuse of resources
  - (f) Reduction of other adverse environmental impacts
- in each case, taking into account any changes in the use or intensity of use of the Premises and/or the Building (and “improve the Environmental Performance” shall be construed in like manner).

**Lease:** the lease of the Premises

**Parties:** the Landlord and the Tenant together

**Premises:** the part of the building that is demised by the Lease

The intention is that the full range of best practice recommendations is included in the Appendix, with the Parties choosing which measures to focus on and implement from time to time, according to the circumstances, the type of Building and both Landlord and Tenant aspirations.



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**DATE:** \_\_\_\_\_

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

**PREMISES:** \_\_\_\_\_

**BUILDING:** \_\_\_\_\_

**LEASE:** dated [ ] between [ ] and [ ]

## 1 General

- The Landlord currently owns the Building and the Tenant currently occupies the Premises under the Lease.
- The Parties agree to work together to improve the Environmental Performance of the Premises and the Building.
- The Parties agree to consider and where appropriate implement the measures set out in this MoU and in the Appendix - Best Practice Recommendations.
- The Landlord will encourage any other occupiers in the Building to enter an MoU in the same terms as this MoU in order to promote improvements in the Environmental Performance of the Building.
- This MoU is not legally binding (except for the provisions which are expressly stated to be so). However, the Parties agree to work together in good faith while this MoU subsists to implement its aims and objectives.
- Either Party may terminate this MoU at any time by notifying the other Party in writing.

## 2 Co-operation and data sharing

- The Parties agree to share (where possible) all data and relevant information they have in relation to the Building and the Premises 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 consumption of energy and water or treatment of waste.

so as to support the assessment of the Environmental Performance of the Premises and the Building, and to inform the decisions of the Parties on the development of a strategy for implementing the aims and objectives set out in this MoU.

- The data and information is referred to in this MoU as “shared data”.
- Shared data will be provided in such form as the Parties agree and shall be provided no less often than [quarterly/annually].
- The Parties will establish a forum for dialogue on the issues set out in this MoU, for the purpose of sharing information, reviewing Environmental Performance and identifying opportunities for improvement. This dialogue may take a variety of forms depending on the size, nature and complexity of the Building. It may range from a simple telephone conversation, an agenda item on an existing occupier liaison forum or a face to face meeting of a specially designated committee attended by representatives of the Parties, any Managing Agents and other persons involved from time to time in the operation or management of the Building and the Premises as the Parties deem appropriate (perhaps called a Green Building Management Group).

**Note:** further details on Green Buildings Management Groups can be found in the [BBP Green Building Management Toolkit](#).

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### 3 Building management

- Where the Landlord controls the hours of operation of any heating, lighting or air conditioning services to the Premises and/or the Building, the Tenant will provide to the Landlord details of its hours of occupation 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.
- So far as practicable the Landlord will have regard to environmental good practice, energy and water efficiency and waste reduction in providing services and carrying out works to the Building.
- Where a Building Management System (BMS) exists for the Building, the Landlord will explain to the Tenant how the system works and ensure that 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.

### 4 Reinstatement of Tenant's alterations

- The Landlord will give reasonable consideration to:
  - > waiving any entitlement it may have to require reinstatement of alterations carried out by the Tenant; and
  - > not including reinstatement requirements on the grant of any licence for alterations.

where such alterations proposed or carried out by the Tenant will improve the Environmental Performance of the Premises and/or the Building at the end of the Lease, and the Landlord considers that it will not need to remove or reinstate such alterations at the end of the Lease.

### 5 Legals

The Parties agree 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 the provisions of the Lease shall prevail over anything in this MoU.
- Shared data shall be used only for the purposes described in this MoU and for no other purpose whatsoever and the recipient of shared data shall keep it confidential and will not disclose it to any other person except:
  - > to any of their agents, consultants or contractors who need to have such information for the purposes of this MoU and who have agreed to keep it confidential
  - > where required to do so by law or
  - > with the written consent of the Party which supplied the shared data.

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## Appendix – Best Practice Recommendations

### Energy

- To develop an energy strategy/policy for the Building.
- Where appropriate, to install separate metering facilities for individual utilities for the Premises, the common parts of the Building and for other occupiers and special uses (preferably AMR systems with the ability to provide half-hourly analysis).

**Note:** The [BBP Better Metering Toolkit](#) provides detailed guidance on metering options and how to use metered data to achieve energy reductions.

- Where appropriate and available at acceptable rates, to purchase energy from renewable sources.
- To review regularly the control time schedules and temperature set points of plant and equipment to align with the Tenant's working hours.
- Where appropriate, to use motion and daylight sensors for lighting control.
- Where possible to use energy efficient bulbs/luminaires in lighting systems.
- To give reasonable consideration to the installation of renewable technologies.
- To consider participation in local and/or communal schemes for energy generation or provision.

### Water

- To develop a water strategy for the Building.
- Where appropriate, to install separate metering facilities for individual Premises and main consumption areas e.g. kitchen areas to monitor usage and identify leaks.
- To conduct a regular programme of leak inspections at the Premises and the Building.
- To install high efficiency plumbing fixtures and control technologies in the Premises and the Building.
- Where possible, to use treated and recycled water, captured rain water and grey water (rather than potable water).

### Waste

- To develop a waste strategy for the Building including, where practicable, the sharing of recycling and other waste facilities by the occupiers of the Building and joint waste strategies with neighbouring buildings.
- To set aside adequate space and facilities for the storage of recyclables (paper, cardboard, glass, plastics etc.).
- To provide appropriate recycling arrangements for electrical items, printer cartridges, fluorescent bulbs, batteries and similar items.
- To implement, where possible, sustainable procurement practices e.g. purchase of environmentally friendly office consumables and the adoption of "take back" and "re-use" schemes with suppliers for products and packaging.
- On refurbishment and fit-out to require contractors to make adequate waste segregation and recycling provisions and to re-use materials wherever practicable.

### Works

- To give reasonable consideration to 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.
- When replacing plant and equipment, to use energy efficient plant and equipment and to give reasonable consideration to the reductions in energy use and improvements in energy rating (including any rating contained within an EPC or DEC) which could be achieved.
- To avoid alterations which have an adverse impact on the Environmental Performance of the Building and/or the Premises.
- When applying for the Landlord's consent to proposed alterations, the Tenant will provide to the Landlord sufficient information in relation to the impact of those alterations on the Environmental Performance of the Building or the Premises.
- To give favourable consideration to alterations proposed that reduce the need for air conditioning and other energy consumption.
- To identify a sustainability rating for any major refurbishment programme e.g. BREEAM, LEED, Ska, EPC, DEC.





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### Transport

- To develop and implement a Green Travel Plan.
- To provide space for bicycle storage and shower/changing facilities for cyclists.
- To consider opportunities for the installation of electric vehicle charging points.
- To establish, where appropriate, shuttle links to local transportation hubs.

### Biodiversity

- To assess the opportunities to improve the biodiversity of the Building including the installation of appropriate habitats to encourage local wildlife and the installation of green/brown roofs and/or living walls.

### Service provisions

- To require contractors e.g. Managing Agents and cleaners and on-site staff to operate in line with the principles set out in this MoU.
- To specify appropriate cleaning and maintenance procedures for specialist “green” plant, equipment, fixtures or fittings e.g. waterless urinals.
- To programme cleaning times to minimise the use of lighting, heating and air-conditioning resources.
- To provide awareness raising and training on environmental issues for cleaning staff.

### Sharing initiatives

- To arrange and attend workshops for the occupiers designed to explain the sustainability initiatives at the Building and demonstrate how reductions and savings to energy, water and waste consumption can be made.
- To provide, for employees of the Tenant and other occupiers in the Building, training, education and communication of achievements on Environmental Performance of the Premises the Building.

### Service charge

- Where practicable, to separately identify the cost of Environmental Performance improvement initiatives and associated savings within the service charge account.
- Where metering arrangements and monitoring practices allow, identify the costs incurred and related Environmental Performance data of shared services and/or in common parts of the Building.





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The way in which a building's Environmental Performance is managed and the responsibilities of each party in maintaining that performance should be of significant importance to building owners, occupiers and their lawyers. The following case studies articulate how the parties can use a green lease or MoU to establish their environmental aspirations for the management and operation of a building, resulting in lower operational costs and reduced adverse environmental impacts.



British Land: 10 Exchange Square



PRUPIM: Hollywood House



Grosvenor: 40 Grosvenor Street



British Land: York House



Legal & General: 99 Gresham Street



Hermes: Prospect House



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### British Land: 10 Exchange Square

At 10 Exchange Square, British Land brought together all parties involved in the building to work collaboratively on sustainability initiatives. Between 2000 and 2012, this collaborative approach saved 1,530 tonnes of CO<sub>2</sub>, diverted over 220 tonnes of waste from landfill, and saved £235,000 on occupiers' energy and water bills.

A well-established Green Building Management Group provides a forum for all parties to agree energy saving initiatives and monitor progress, notably through data provided from the new metering system and optimisation process. All members are asked to sign a MoU and meet at least twice a year.

**Full case study** ([http://www.betterbuildingspartnership.co.uk/download/green-building-managment---british-land-\(10-exchange\).pdf](http://www.betterbuildingspartnership.co.uk/download/green-building-managment---british-land-(10-exchange).pdf))



### PRUPIM: Hollywood House

At Hollywood House in Woking, PRUPIM worked in partnership with Skanska as both occupier and contractor to deliver a sustainable refurbishment. The green enhancements enabled PRUPIM to retain Skanska as an occupier, providing a building that lives up to the company's green aspirations.

As a result, Skanska was one of the first occupiers to sign PRUPIM's standard lease incorporating "green" clauses and a Green Memorandum of Understanding. Under the terms of the Green Lease, an environmental management plan has been put in place, which sets out targets for the building that both PRUPIM and occupiers are working towards.

To support the implementation of this plan, a Green Building Management Group has been established, providing opportunities for PRUPIM, occupiers and the building manager to work together to understand the building's performance and drive environmental improvements.

**Full case study** (<http://www.betterbuildingspartnership.co.uk/download/single-building-retrofit---prupim.pdf>)





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### Grosvenor: 40 Grosvenor Street

40 Grosvenor Place is a 230,000 sq ft, six-storey office building completed in 1999, developed jointly by Grosvenor and Mountcity.

To identify energy reduction opportunities and improve billing processes and accuracy, Grosvenor installed an extensive AMR system at 40 Grosvenor Place, fitting 96 sub-meters in 2006 and a further 47 in 2011. These provide half-hourly energy data for all major pieces of equipment and specialist areas, such as server rooms, as well as lighting and small power for the four cores on each floor.

In 2011, the building management team also introduced environmental key performance indicators and set up a Green Building Management Group with occupiers, which meets quarterly.

Since the installation of the AMR system Grosvenor has saved occupiers £676,600 on energy bills and has cut CO<sub>2</sub> emissions by 17,650 tonnes.

**Full Case Study** ([http://www.betterbuildingspartnership.co.uk/download/green-building-managment---grosvenor-\(40-gvnr\).pdf](http://www.betterbuildingspartnership.co.uk/download/green-building-managment---grosvenor-(40-gvnr).pdf))



### British Land: York House

At York House, British Land controlled energy use reduced by 38% between 2009 and 2011, and occupiers' energy use in their areas is 11% lower as a result of close collaboration with occupiers and a new automatic meter reading (AMR) system.

A well-established Green Building Management Group, with occupiers and the building management team, provided a forum for all parties to discuss the new metering system, as well as to agree initiatives and monitor progress on an ongoing basis.

Roles and responsibilities were discussed at Green Building Management Group meetings and formalised through an MoU.

**Full Case Study** (<http://www.betterbuildingspartnership.co.uk/download/automated-metering---british-land-1.pdf>)



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### Legal & General: 99 Gresham St

At 99 Gresham Street, a multi-occupied London office building, Legal & General Property engaged with occupiers to pilot a new approach to improve Environmental Performance. This has cut annual energy costs by £69,510 and reduced CO<sub>2</sub> emissions by 530 tonnes.

Members of the Legal & General Property team met with occupiers to outline the company's aspirations for improving the building, at the same time as highlighting that cost reductions were a key driver for the work. They have now developed strong relationships, and representatives from Legal & General Property meet with occupiers each month to discuss ongoing performance and improvement opportunities.

Legal & General Property carried out a thorough environmental audit and developed a detailed action plan to improve performance e.g. modifications and improvements to the chiller and air-conditioning system and the Building Management System.

**Full Case Study** (<http://www.betterbuildingspartnership.co.uk/download/single-building-retrofit---lgp-2.pdf>)



### Hermes: Prospect House

At Prospect House, Hermes Real Estate worked with occupier, NBC Universal, and managing agent, Jones Lang LaSalle, to implement sustainable technologies and management strategies, as part of its Responsible Property Management programme. In 2008, this saw a 15% reduction in annual CO<sub>2</sub> emissions, an 18% cut in water use, and zero waste sent directly to landfill.

Hermes Real Estate engaged with occupier, NBC Universal, to understand its sustainability practices and commitments, at the same time as encouraging the company to implement initiatives at the property level. As part of its joint CO<sub>2</sub> programmes with occupiers, Hermes Real Estate established an action plan with NBC Universal, with the support of managing agent, Jones Lang LaSalle, and facilities management consultants, Focus FM. On an ongoing basis, sustainability is covered during quarterly occupier meetings.

**Full Case Study** (<http://www.betterbuildingspartnership.co.uk/download/single-building-retrofit---hermes.pdf>)





## Glossary

### BREEAM

BREEAM is the Building Research Establishment Environmental Assessment Method which is used for measuring a building's environmental performance in terms of sustainable design. It is the most commonly used method in the UK compared to other assessment methods and is widely adopted in various guises globally.

### Building

The whole building of which the Premises form part.

### Building Management System (BMS)

A computer based central control system which is installed within a Building to manage the operation of its services – heating, cooling, ventilation, hot water and lighting, and in some case the integration with the Building envelope through control of shading devices and windows.

### Building Management Group or Building Management Committee

A group comprising representatives of the building owner, occupiers and building management who meet periodically to discuss the operations of the Building. Such a forum provides an opportunity for owners and occupiers to engage on environmental issues, review performance and identify opportunities to improve the Environmental Performance of the Building (amongst other issues).

### CCHP

Combined Cooling Heat and Power (also referred to as Tri-generation) is an on-site or localised electricity generator which produces electricity, heat and coolth. The system is typically fed by natural gas from the national grid. Heat produced by the

generator is captured for the Building's hot water system. Coolth is achieved by incorporating an absorption chiller into the system which converts waste heat from the CHP to create chilled water used for cooling a Building.

### Display Energy Certificate (DEC)

A Display Energy Certificate as defined in Regulation 2(1) of the Energy Performance of Buildings (England and Wales) Regulations 2012 (SI 2012/3118).

### Energy Performance Certificate (EPC)

An Energy Performance Certificate as defined in Regulation 2(1) of the Energy Performance of Buildings (England and Wales) Regulations 2012 (SI 2012/3118).

### Environmental Performance

All or any of the following arising from the operation or use of premises:

- (a) Energy consumption
- (b) Water consumption and discharge
- (c) Waste generation and management
- (d) Generation and/or emission of greenhouse gases
- (e) Other adverse environmental impacts

### Environmental Performance Data

Data in respect of energy consumption, water use and discharge, waste production and recycling relating to the Premises and/or the Building.

### Green Building Management Group

A Building Management Group which meets specifically to review and improve the Environmental Performance of the building.

### Green Lease

A standard form lease with additional clauses included which provide for the management and improvement of the Environmental Performance of the Premises and/or the Building by both owner and occupier(s).

### LEED

Leadership in Energy and Environmental Design (LEED) is an international green building certification system that measures a building's design against a set of performance categories. Developed and owned by the US Green Building Council, LEED is being used more frequently in the UK as an alternative to BREEAM.

### Memorandum of Understanding (MoU)

A written agreement setting out how the Environmental Performance of the Premises and/or the Building will be managed and improved by owner and occupier.

### Premises

The part of a Building which is demised by a lease.

### Recommendation Report

A report as defined in Regulation 4 of the Energy Performance of Buildings (England and Wales) Regulations 2012 (SI 2012/3118).

### SKA

A UK labelling system, developed and owned by the Royal Institution of Chartered Surveyors (RICS), which is designed to rate and compare the environmental performance of fit-outs in office and retail buildings.

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# Acknowledgements

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