# BBP GREEN LEASE TOOLKIT

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**Introduction**.

The Green Lease Toolkit offers different levels of drafting, which range from a flexible agreement for the parties, through obligations on the parties that must be commercially reasonable, to more stringent obligations, reflecting light, medium and dark green lease drafting variants where applicable.

To show how the clauses in this toolkit fit into a standard commercial lease and to place them in the context of such a lease this toolkit has taken as a starting point the Model Commercial Lease ("MCL") lease of part of an office building (Model Commercial Lease – Lease of part of an office building) in its form as at the date of this Toolkit. If the clauses are being added into other leases including leases of a building on an estate or in a retail centre appropriate amendments will need to be made. You will need to be aware of the following interpretation provisions of the MCL lease:

- The definition of Premises includes conducting media and Landlord's plant, equipment and fixtures exclusively serving the Premises and all Tenant's fixtures. It may also include the Tenant's fire detection systems.
- Clause 2.2 states that words such as includes and including are used without limitation or qualification to the subject matter of the provision.
- Clause 2.3 states that all notices must be given in writing.
- Clause 2.4.5 states that references to legislation are to that legislation as amended from time to time.
- Clause 2.4.8 states that where the consent or approval of a party is required that consent or approval will not be unreasonably withheld or delayed.
- Clause 2.5.3 states that an obligation not to do something includes an obligation not to permit another person to do it.
- Clause 5.5 includes extensive entry safeguards which the Landlord must observe when entering the Premises including an obligation to give notice, to cause as little interference to the Tenant's business as reasonably practicable, to cause as little physical damage as reasonably practicable and to make good any damage caused. These will apply where any right of entry is provided for the Landlord in this toolkit unless otherwise stated.

Consideration will therefore need to be given to these points when incorporating the drafting into other leases.

The drafting notes following the clauses in this toolkit state where the clause should go in the MCL.

## Definitions

| ***Term*** | ***Meaning*** | ***Source notes*** |
|---|---|---|
| **Community** | *those living, working and studying in or visiting the area surrounding the Premises [and the Building]* | As referenced in the defined term Social Impact. |
| **Digital Protocol Policy** | *the policy provided by the Landlord to the Tenant from time to time setting out the method for data collection and the interface with the Premises and the Building's smart systems;* | As referenced in the smart building technology provision |
| **Embodied Carbon** | *(a) In relation to building materials used for the Premises [and the Building] the Greenhouse Gas Emissions that occur through extraction of raw materials, their, manufacture into building materials and the transportation of those building materials; and*<br>*(b) in relation to the Premises [and the Building] the* | As referenced in the dark green service charge provisions and the circular economy clause |

| Term | Meaning | Source notes |
|---|---|---|
| | *Greenhouse Gas Emissions that occur when it is or was built, repaired, fitted out, stripped out, renovated or deconstructed;* | |
| **Environmental Performance** | *all or any of the following*<br>*a) energy consumption*<br>*b) water consumption*<br>*c) Waste generation and management*<br>*d) Greenhouse Gas Emissions*<br>*e) the biodiversity present in the Premises [and the Building]*<br>*f) the resilience of the Premises [and the Building] to the actual or anticipated effects of climate change*<br>*g) other adverse environmental impacts*<br>*including arising from works carried out to or materials used in the Premises [and the Building] and from travel to and from the Premises [and the Building];*<br>**Drafting note**<br>This is wider than the current definition in the MCL which will need to be deleted and replaced with this definition. When the defined term is used it is clear that it covers such matters arising out of the use and occupation of the Premises (and if appropriate the Building) but this wording confirms that the specified environmental impacts also apply to embodied carbon and travel to and from the Premises. | As referenced in various provisions |
| **Environmental Rating(s)** | *[insert any environmental rating(s) which are applicable or which either party is contractually obliged to obtain], and where any relevant rating organisation rebases, re-designates or otherwise changes the substance of or criteria for a relevant rating (or the number of grades or rankings above or below the relevant rating) or does any other act or thing so that the comparative environmental performance reflected in[any of] the rating[s] is changed then in respect of [that][the] rating there is deemed substituted for [that][the] rating such new or revised rating[s] as will then reflect and be equivalent to the environmental performance implied by [any environmental rating which is applicable or which either party is contractually obliged to obtain], and any other environmental rating or improved environmental rating in respect of the [Building] obtained by the Landlord from time to time and notified to the Tenant;* | As referenced in the Standards provision |

| *Term* | *Meaning* | *Source notes* |
|---|---|---|
| **EPC** | *an Energy Performance Certificate and Recommendation Report (as defined in the Energy Performance of Buildings (England and Wales) Regulations 2012);*<br><br>**Drafting note**<br><br>This is the definition in the MCL which includes in clause 2.4.5 a statement that references to legislation is to that legislation as from time to time amended or replaced | As referenced in various provisions |
| **EPC Rating** | *the energy performance rating (as defined in Regulation 11 of the Energy Performance of Buildings (England and Wales) Regulations 2012) shown on an EPC (or any equivalent rating which is substituted for it from time to time)* | As referenced in various provisions |
| **Greenhouse Gas Emissions** | *emissions of the greenhouse gases listed at Annex A of the 1998 Kyoto Protocol to The United Nations Framework Convention on Climate Change, as may be amended from time to time each expressed as a total in units of carbon dioxide equivalent (CO2 e) and which can be classified as scope 1, 2 and 3 emissions by the Greenhouse Gas Protocol: A Corporate Accounting and Reporting Standard, Revised Edition 2015 as updated periodically;* | As referenced in various provisions |
| **Green Tariff** | *a tariff charged for the supply of electricity either from a Green Supplier or from a supplier of electricity that purchases unbundled Renewable Energy Guarantees of Origin (REGOs) to support their green tariff;* | As referenced within provisions on Renewable Energy |
| **Green Supplier** | *(a) an electricity retailer that purchases 100% Renewable Energy from the relevant electricity market or directly from a Renewable Energy Project Developer (or from both of them); or*<br>*(b)a generator of 100% Renewable Energy;* | As referenced within provisions on Renewable Energy |
| **Greywater** | *waste water generated in the Premises [or the Building] from all sources excluding from toilets;* | As referenced in the service change provisions |
| **Improvement in Environmental Performance** | *includes all or any of the following:*<br>*a) a reduction in or improved efficiency of energy consumption, including the use of alternative sources of energy with a lower environmental impact;*<br>*b) a reduction in or improved efficiency of water consumption;*<br>*c) a reduction in Waste generation;*<br>*d) an improvement in the rate or efficiency of Waste recycling or reuse of resources;*<br>*e) a reduction in Greenhouse Gas Emissions (including those associated with travel to and from the Premises [or the* | As referenced in various provisions |

| *Term* | *Meaning* | *Source notes* |
|---|---|---|
| | *Building]);*<br>*f) an improvement in the biodiversity present in the Premises [and the Building];*<br>*g) an improvement in the resilience of the Premises [and the Building] to actual or anticipated effects of climate change;*<br>*h) a reduction in other adverse environmental impacts*<br>*in each case, taking into account [making proper allowance for] any changes in the use or intensity of use of the Premises [and the Building];*<br>*(and "Improve the Environmental Performance" and "Improving the Environmental Performance" are construed in like manner);* | |
| **PPA** | *a power purchase agreement between the [Landlord]/[Tenant] [or any Group Company] and a Renewable Energy Project Developer;* | As referenced in provisions on Renewable energy |
| **Real Living Wage** | *a wage based on an hourly rate that is higher than the minimum national statutory wage and includes the living wage as calculated by the Resolution Foundation and announced by the Living Wage Foundation from time to time and any replacement measure intended to support the principles of the Real Living Wage.* | As referenced in the preamble to the provisions on Social Impact. |
| **100% Renewable Energy** | *electricity that is sourced from naturally replenishing non-fossil sources including solar, wind, hydropower, tidal power and geothermal;* | As referenced in provisions on Renewable energy |
| **Renewable Energy Project** | *a project, whether in development or in operation, that generates (or will on commencement of operation generate) 100% Renewable Energy;* | As referenced in provisions on Renewable energy |
| **Renewable Energy Project Developer** | *a developer, owner or operator (as the case may be from time to time) of a Renewable Energy Project;* | As referenced in provisions on Renewable energy |
| **Salvage** | *recover, reuse, repurpose, reprocess or recycle (and reference to "Salvaged" or "Salvaging" is construed accordingly);* | As referenced in the provisions on Recycling of Waste and *Yield up* |
| **Salvage Target** | *a target to Salvage a minimum of [x]% of Waste with the aim of minimising the amount of Waste that is sent to landfill;* | As referenced in the provisions on Recycling of Waste and *Yield up* |
| **Social Impact** | *(a)economic, environmental and social benefits to the Community which include:*<br>*i) local employment opportunities;* | As referenced in the Cooperation and |

| *Term* | *Meaning* | *Source notes* |
|---|---|---|
| | *ii) apprenticeship and training opportunities;*<br>*iii) support for local businesses and suppliers;*<br>*iv) local Community engagement and volunteering;*<br>*v) engagement with local schools and other educational establishments;*<br>*vi) promotion of public transport and other environmentally friendly and cost efficient means of transport; and*<br>*vii) promotion of health and wellbeing (including mental health) or*<br>*(b)the impact of the Premises [and the Building] on the physical, mental and social health of the occupiers;* | Building Management Group provisions |
| **Travel Plan** | *a written plan setting out a scheme to encourage, regulate and promote sustainable travel measures for owners, tenants, occupiers, those working at or visitors to the Premises [and the Building];* | As referenced in the Building Management Group provisions |
| **Waste** | *any spoil, waste, rubbish, debris, materials or goods which are created by or result from any activity undertaken by the relevant party in the Premises [and the Building];* | As referenced in the Recycling of Waste and the Yield Up provisions |
| **Waste Policy** | *a policy prepared by the Landlord for the Building setting out practical details of how Waste can be Salvaged [with the goal of achieving the Salvage Target] including details of shared recycling and other waste facilities [in the Building and], where applicable, neighbouring buildings;* | As referenced in the Recycling of Waste and the Yield Up provisions<br>The words in square brackets are only needed for the dark green versions of the Recycling of Waste and Yield Up provisions as these are the only versions of those clauses which include goal setting |
| **Waste Salvage Plan** | *a plan setting out details of how reinstatement and strip out works are to be undertaken to achieve the Salvage Target which will have regard (without limitation) to the Waste Policy;* | As referenced in the *Yield Up* provisions |

## Co-operation provision

### Preamble

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 and, where included, the Social Impact of the Premises [or the Building] may assist by:

- setting the tone and, in respect of Environmental Performance, reflecting what is already market standard;
- where more detailed/onerous green lease or equivalent clauses prove unacceptable, providing a lightweight minimum regime within which the parties can raise issues and foster discussion about environmental sustainability and, where included, Social Impact issues; and
- providing a background against which to consider the validity and recoverability of costs incurred in achieving environmental sustainability and Social Impact objectives as well as the validity of the grant or withholding of consent to works (which may be required by other clauses in the lease).

The very essence of co-operation obligations means that they should avoid compulsion, but the following versions of this clause reflect increasing degrees of stringency and focus. The need to avoid compulsion means that this clause does not include any legal obligation to implement any strategies or initiatives arrived at. This lack of compulsion doesn't stop the parties from implementing any strategy or initiative which the parties consider to be appropriate, but they will need to have reached a binding agreement on matters such as who will carry out the works and how the costs will be dealt with. Equally, if the parties want to have specific obligations to carry out works, where works are already agreed as part of the lease negotiations, this will need to be separately drafted, whether in an agreement for lease or in the lease.

### Suggested drafting

***Light green version***

*The Landlord and the Tenant:*

*(a) confirm that wherever reasonably practicable they intend to promote and Improve the Environmental Performance [and Social Impact ] of the Premises [and the Building]; and*

*(b) agree in good faith, but without legal obligation, to co-operate with each other to identify appropriate strategies and initiatives to Improve the Environmental Performance [and Social Impact ] of the Premises [and the Building].*

***Medium green version***

*The Landlord and the Tenant:*

*(a) confirm that they intend to Improve the Environmental Performance [and Social Impact ] of the Premises [and the Building];*

*(b)must in good faith co-operate with each other to identify appropriate strategies and initiatives to Improve the Environmental Performance [or Social Impact ] of the Premises [and the Building]. Nothing in this clause [ ] is intended to impose an unreasonable economic burden on the parties, or require the parties to agree to terms which are adverse to their business interests; and*

*(c) must consider any reasonably detailed written proposal made by the other for any measures which are likely to Improve the Environmental Performance [or Social Impact ] of the Premises [and the Building].*

***Dark green version***

*The Landlord and the Tenant:*

*(a)confirm that they intend to Improve the Environmental Performance [and Social Impact ] of the Premises [and the Building];*

*(b)must co-operate with each other to identify appropriate strategies and initiatives to Improve the Environmental Performance [and Social Impact ] of the Premises [and the Building] with a view to achieving at least a [X] % reduction of Greenhouse Gas Emissions year on year from the Premises [and the Building];*

*(c) where they identify appropriate strategies and initiatives to Improve the Environmental Performance [and Social Impact ] of the Premises [and the Building], agree in good faith, but without legal obligation, to co-operate with each other to implement relevant strategies and initiatives; and*

*(d) must have due regard to any reasonably detailed written proposal made by the other for any measures which are likely to Improve the Environmental Performance [and Social Impact ] of the Premises [and the Building] and the Landlord or the Tenant (as applicable) must respond to the other within a reasonable period of receiving the proposal with reasons for accepting, rejecting or modifying it bearing in mind the commonly agreed objective of Improving the Environmental Performance [and Social Impact ] of the Premises [and the Building].*

**Drafting note**

The light green clause is the same as the provision at paragraph 1 in the Sustainability schedule (Schedule 7) of the MCL save for the deletion of the word “promote” and the possible inclusion of Social Impact and noting the wider definition of Environmental Performance in this toolkit. The clause used should be substituted for paragraph 1 in the Sustainability schedule (Schedule 7) of the MCL.

The parties can agree any reduction target and this may be dependent on factors such as the length of the lease and the nature of and level of emissions from the relevant building. In "The Carbon Law" in Exponential Roadmap Initiative’s The 1.5°C Business Playbook, p.5; and J. Rockström et al., A roadmap for rapid decarbonisation, Science 355.6331, pp.1269-1271 (2017) a figure of 7% per annum is suggested. Other specific targets in relation to ESG matters such as Waste production, biodiversity, water use and Social Impact could be included in the above clause but are likely to require technical input.

## Building Management Group

***Preamble***

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 (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 a 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 as the cost and administrative burden of running a BMG when few people actually attend can be prohibitive and a barrier to communication.

Even if the contact method will be informal, it is still useful to have such a clause to impose an obligation on un-cooperative parties at least to be available for discussion in the hope that this may lead to further engagement and progress.

The light green version of this clause provides an informal method for the parties to communicate on environmental and social matters.

The medium green version of this clause provides, at the Landlord's option, for a more formal communications body, a forum, but this is not a requirement. The drafting includes an obligation on the Landlord and Tenant to use reasonable endeavours to ensure that their representative attends.

The dark green version of this clause requires the Landlord to establish a forum with more specific procedural requirements and more targeted discussions in relation to emissions reduction and other environmental or social targets.

***Suggested drafting***

**Light green version**

*The Landlord and the Tenant agree in good faith to engage as often as is reasonably required (and in any event at least once a year) to ensure that there is effective communication between them in relation to:*

a) *considering the adequacy and improvement of data sharing on the Environmental Performance of the Premises [and the Building];*

b) *reviewing and agreeing targets and strategies to Improve the Environmental Performance of the Premises [and the Building];*

c) *agreeing targets and strategies for a Travel Plan; and*

d) *[discussing and agreeing strategies to improve the Social Impact of the Premises [and the Building]].*

*Communication may include establishing a Forum or equivalent mechanism (with other interested parties, if applicable) that provides an appropriate means of dialogue and exchange of views, whether by meeting in person or not, to which all parties with an interest in or involvement with the Building can be invited.*

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

**Drafting note**

If the forum needs to be limited to energy water and Waste this will need to replace the reference to Environmental Performance.

This is less onerous than the establishment of the environmental forum in paragraph 2 of the Sustainability schedule (Schedule 7) of the MCL. If the light green version of this clause is used it will need to replace paragraph 2 of that schedule.

**Medium green version**

*The Landlord may establish a forum for all parties with an interest in or involvement with the Building (the "**Forum**") that will meet on a regular basis to:*

*a) consider the adequacy and improvement of data sharing on the Environmental Performance of the Lettable Units including the Premises [and the Building];*

*b) review and agree targets and strategies to Improve the Environmental Performance of the Lettable Units including the Premises [and the Building];*

*c) agree targets and strategies for a Travel Plan; and*

*d) [discuss and agree strategies to improve the Social Impact of the Lettable Units including the Premises [and the Building]].*

*The Forum may take any form that affords an appropriate means of communication and exchange of views, whether by meeting in person or otherwise.*

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

*[The Landlord and the Tenant may agree to allow third parties to participate in the Forum for a specified period or for a specified purpose.]*

*[The Landlord will use reasonable endeavours to ensure that a representative of any managing agents appointed by the Landlord attends and participates in any Forum meetings or discussions of which appropriate advance notice has been given.]*

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

*If no Forum is established, the Landlord and the Tenant will promote equivalent mechanisms that provide an appropriate means of dialogue and exchange of views on the Environmental Performance [and Social Impact] of the Premises [and the Building], whether by meeting in person or not, to which all parties with an interest in or involvement with the Building can be invited.*

**Drafting note**

The medium green version of this clause mirrors the wording in paragraph 2 of the Sustainability schedule (Schedule 7) of the MCL but extended to cover all Environmental Performance data and noting the wider definition of Environmental Performance in this toolkit and the additional final paragraph. Also note the word "try" has been replaced with "reasonable endeavours".

**Dark green version**

*The Landlord must establish a forum for all parties with an interest in or involvement with the Building (the "**Forum**") to:*

a) *consider the adequacy and improvement of data sharing on the Environmental Performance of the Lettable Units including the Premises [and the Building];*

b) *review and agree targets and strategies to Improve the Environmental Performance of the Lettable Units including the Premises [and the Building] with a view to achieving at least a [X] % reduction of Greenhouse Gas Emissions year on year from the Premises [and the Building];*

c) *agree targets and strategies for a Travel Plan; and*

d) *[discuss and agree strategies to improve the Social Impact of the Lettable Units including the Premises [and the Building]].*

*The Forum may take any form that affords an appropriate means of communication and exchange of views, whether by meeting in person or otherwise.*

*The Forum will meet at least once a quarter and appropriate advance notice of each meeting must be provided by the Landlord, and the Landlord and the Tenant must each nominate a suitable person to participate on its behalf at the Forum and must ensure that its nominee attends or participates in any Forum meetings or discussions.*

*[The Landlord and the Tenant may agree to allow third parties to participate in the Forum for a specified period or for a specified purpose.]*

*[The Landlord will use reasonable endeavours to ensure that a representative of any managing agents appointed by the Landlord attends and participates in any Forum meetings or discussions of which appropriate advance notice has been given.]*

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

*The Landlord and the Tenant will encourage other appropriate means of dialogue and exchange of views on the Environmental Performance and Social Impact of the Premises [and the Building], whether by meeting in person or not, to which all parties with an interest in or involvement with the Premises [and the Building] can be invited.*

**Drafting note**

As with the cooperation clause the intention of this clause is to ensure that the parties engage with each other and so it deliberately avoids any element of compulsion requiring the parties to implement anything which is agreed. This does not prevent them from agreeing to implement any decisions which are made where decisions cover matters such as who will carry out the works and how the costs will be dealt with. Best practice will be to document this agreement in a legally binding document.

To provide focus for the Forum additional drafting could be included requiring an annual statement to be produced which contains: a summary of energy and water use and Waste generated by the Premises (and where relevant the Building); details of the agreed targets and strategies; a summary of the progress made towards achieving the targets agreed for the previous year and identifying any other achievements (e.g reduction in fossil fuel consumption). If such drafting is included responsibility for the production of that statement should be allocated and if appropriate costs covered in any service charge.

The parties can agree any reduction target and this may be dependent on factors such as the length of the lease and the nature of and level of emissions from the relevant building. In "The Carbon Law" in Exponential Roadmap Initiative's The 1.5°C Business Playbook, p.5; and J. Rockström et al., A roadmap for rapid decarbonisation, Science 355.6331, pp.1269-1271 (2017) a figure of 7% per annum is suggested. Other specific targets in relation to ESG matters such as Waste production, biodiversity, water use and Social Impact could be included in the above clause but is likely to require technical input.

The dark green version of this clause would be used in place of paragraph 2 of the Sustainability schedule (Schedule 7) of the MCL.

## Social Impact

### Preamble

Social Impact is included in the co-operation, building management group and data sharing provisions.

There is growing demand for green lease clauses to go further in addressing social issues, forming part of what some commentators are referring to as "responsible leases". Buildings can have a significant impact on the lives of those who interact with them and the real estate sector is well placed to create positive social impact.

When it comes to considering how to incorporate social issues into leases, a "one size fits all" approach will not be possible. The extent to which social obligations can be addressed will depend upon a number of factors. Location is key, is the building in an urban or rural setting? Who is the community that the building should serve? Does the building form part of a wider estate owned by the Landlord or is it a standalone asset? The intended use of the building will be a material consideration; the types of social initiatives that a retail or food and beverage (F&B) user can commit to will be very different to an office or logistics tenant.

In a ten-year lease, what the parties might consider to be key social initiatives could look very different at the start of the term to the end of it. If specific social obligations are set out in detail in the lease, the risk is that it quickly becomes outdated. To avoid this and to allow targets or goals to evolve over time, we recommend that examples of social impact measures in the definition of Social Impact are not strictly prescribed (and are non-exhaustive) unless the parties have clear actions, targets or goals they have agreed prior to the lease.

Appropriate Social Impact measures will depend upon the nature of the building or estate and the Landlord's own social agenda. However, examples could include that tenants and occupiers of the building or estate will (where practicable):

- Complete the Social Value Portal's occupier checklist at least once every 12 months and provide a copy to the Landlord;
- Advertise job opportunities locally (with local residents to be offered the position where they meet the criteria);
- Work with local schools or other educational establishments, e.g., offering work experience, career support or giving talks about whatever sector the Tenant is involved in;
- Engage with local supply chains and support local businesses;
- Offer apprenticeships to local residents;
- Volunteering with local community groups;
- Participate in community-wide events, e.g. summer fairs or local fundraising initiatives;
- Register for Living Wage accreditation both in respect of their own employees and also individuals engaged by the Tenant for the supply of services, e.g. cleaning and catering companies;
- Work with local charities, e.g. toy-drives at Christmas;
- If a Tenant is using the Premises for F&B purposes or as a food store, donate surplus or end-of-life produce to local food banks;
- Offer mental health support and resources to its employees and users;
- Offer mentoring for members of the local community;
- When vacating or refurbishing the Premises offer any old furniture to suitable charities; and

- Promote healthy and sustainable transport options for employees and users of the Premises, e.g. car sharing schemes and bike-to-work programmes.

On the issue of a living wage the BBP believes in encouraging commitments to pay the Real Living Wage (as defined in this toolkit) by the Landlord and the Tenant to their employees and where practicable to Landlords and Tenants taking steps to ensure this practice is followed in each of their supply chains. For some tenants (e.g. office tenants) this may be something they are already doing and which they will be able to accommodate and willing to commit to. For tenants in other sectors e.g. retail, this may be more difficult. This is not an issue which is currently widely covered but the BBP supports it as an area for future development. Such drafting does not form part of this version of the toolkit, however, if the parties do want to include obligations in respect of the Real Living Wage there is some suggested wording in the drafting note to this clause which is a reasonable endeavours commitment and is limited to employees of the Landlord and Tenant who work at the Building. In the case of the Landlord, it extends to using reasonable endeavours to ensure that the employees of its direct contractors and suppliers are also paid the Real Living Wage where their work involves dealing with the management or operation of the Building.

***Suggested drafting***

***Light green version***

*The Landlord and the Tenant will co-operate with each other in responding to occasional surveys related to Social Impact.*

*In performing their obligations under this Lease, the Landlord and the Tenant must comply with all applicable anti-slavery and human trafficking laws, Acts, regulations, rules and codes from time to time in force including the Modern Slavery Act 2015 and must so far as is reasonably practicable procure that any contracts entered into with contractors and other third parties employed to deliver goods and/or services to or at the Premises [and the Building] contains similar obligations.*

***Dark green version***

*The Landlord and the Tenant will co-operate with each other in responding to occasional surveys related to Social Impact.*

*In performing their obligations under this Lease, the Landlord and the Tenant must comply with all applicable anti-slavery and human trafficking laws, Acts, regulations, rules and codes from time to time in force including the Modern Slavery Act 2015 and must so far as is reasonably practicable procure that any contracts entered into with contractors and other third parties employed to deliver goods and/or services to or at the Premises [and the Building] contain similar obligations.*

*The Tenant will have regard to and where practicable comply with:*

*a) the workplace co-ordination policies to maximise employment and skills opportunities within [the Building] [and any other premises forming part of the Landlord's portfolio within the vicinity of the Premises] and any other reasonable local employment and skills initiatives implemented by the Landlord and advised to the Tenant from time to time;*

*b) the diversity and inclusion policies designed to improve accessibility to Lettable Units [in the Building] [and any other premises forming part of the Landlord's portfolio within the vicinity of the Premises] implemented by the Landlord and advised to the Tenant from time to time;*

c) *the delivery consolidation policies operated by the Landlord to reduce congestion in the vicinity of the Premises and advised to the Tenant from time to time in relation to the delivery of stock and other items to the Premises; and*

d) *the policies designed to minimise food waste and encourage sustainable business [in the Building] [and any other premises forming part of the Landlord's portfolio within the vicinity of the Premises] implemented by the Landlord and advised to the Tenant from time to time.*

**Drafting note**

There is no medium green version of this clause, the additional element of the dark green version of this clause depends on the Landlord having policies in place which address Social Impact with which the Tenant will need to comply.

This clause would be added to the Sustainability schedule (Schedule 7) of the MCL.

If the parties did want to include drafting in respect of the Real Living Wage they could consider the following wording which would be included in either the medium or the dark green versions of this clause.

*The Landlord must use reasonable endeavours to ensure:*

a) *that all of the employees of the Landlord who work at the Building and all employees of direct contractors and suppliers (being the contractors or suppliers that are appointed by the Landlord in connection with any aspect of the management or operation of the Building ("Direct Contractors or Suppliers")) are at all times paid a Real Living Wage; and*

b) *that the employees of first tier contractors or suppliers (being the contractors and suppliers that are appointed by Direct Contractors and Suppliers in connection with any aspect of the management or operation of the Building) whose work involves any aspect of the management or operation of the Building are at all times paid a Real Living Wage,*

*[provided that such obligation does not lead to a material increase in costs to the Tenant through increases to the Service Charge [or to the Landlord.]]*

*The Tenant must use reasonable endeavours to ensure that all employees of the Tenant who work at the Premises are at all times paid a Real Living Wage [provided that such obligation does not lead to a material increase in costs to the Tenant].*

## Sustainable Use

***Preamble***

The way in which the Tenant uses and operates the Premises and, where relevant, the Landlord manages the Common Parts will be important in terms of the efficient use of the energy and water and the amount of Waste generated. This clause is designed to deal with behavioural matters which can affect the Environmental Performance of the Premises, and (where applicable) the Building or any estate. It is not intended that this clause requires any works to the Premises or (where applicable) the Building or any estate to improve their Environmental Performance.

The lease will already include a cooperation clause which sets out the parties' intentions and this clause develops these intentions further.

At the moment there is only one version of this clause but parties who want to be more ambitious could consider:

- extending the clause to cover other aspects of Environmental Performance such as biodiversity or climate resilience; and
- including specific drafting where they have been able to agree targets for improvements in any of the various environmental metrics discussed in the sections of this toolkit which consider the Co-operation provision and the Building Management Group.

Paragraphs (a) and (b) of this clause require the Premises to be operated in a way which is not wasteful in terms of the amount of water and electricity consumed at the Premises e.g. not running the air conditioning systems with the windows open, turning off the lights, using available shading, not leaving taps running. These paragraphs only address water and energy consumption and not other aspects of Environmental Performance. Recycling of Waste is dealt with in a separate clause of this toolkit.

Paragraph (c) of this clause includes drafting to cover the use of equipment or facilities which are intended to be operated in a particular way so as to maintain or improve Environmental Performance. The clause includes a general reference to the operation of equipment and facilities but the drafting could be adapted to refer to specific equipment or facilities (or other measures) if appropriate including equipment designed to address other environmental issues such as climate resilience.

Many leases contain an obligation on the Tenant to comply with Landlord's regulations from time to time and such regulations might cover the matters in this clause. If a Landlord has an environmental/sustainability plan for the Building, consideration could be given to more focused drafting based on that plan.

***Suggested drafting***

*The Tenant must*

*a) not operate the Premises in a way which increases the consumption of energy or water above that which would be reasonable for the specific purposes for which the Tenant uses the Premises in accordance with the Permitted Use; and*

*b) use [all] reasonable endeavours to ensure the efficient use of energy and water in the Premises [and in respect of its use of any Common Parts of the Building] [; and*

*c) operate any equipment or facilities within the Premises (or which exclusively serve the Premises and are the responsibility of the Tenant to operate and/or maintain) in accordance with the reasonable recommendations and requirements of the Landlord in order to maintain the Environmental Performance of the Premises*

*Provided always that nothing in this clause will:*

*a) prevent any change of use or the intensification of the Tenant's use of the Premises provided that*

*i) where the Landlord's consent to such change or intensification is required by this Lease, that consent has been obtained; and*

*ii )in all cases, any other necessary consent has been obtained; or*

*b) prevent the maintenance of acceptable ambient conditions for the Permitted Use of the Premises; or*

*c) require the Tenant to carry out any work to the Premises or to improve any equipment or facilites*

*The Landlord must*

*a) not operate the [Building][Common Parts] in a way which increases the consumption of energy or water above that which would be reasonable for the specific purpose for which the Landlord uses the [Building] [Common Parts];*

*b) use [all] reasonable endeavours to ensure the efficient use of energy and water in the [Building] [Common Parts];*

*c) operate any Building Management System so as to ensure the efficient use of energy and water; and*

*d) properly operate any equipment or facilities in the Common Parts the purpose of which (in whole or in part) is to maintain the Environmental Performance of the Building*

*Provided always that nothing in this clause will:*

*a) prevent:*

*i) any lawful use or intensification of use of the [Building][Common Parts]; or*

*ii) the maintenance of acceptable ambient conditions for the [Building][Common Parts] [and where relevant the Premises] for those uses; and*

*b) require the Landlord to carry out any work to the [Building][Common Parts] or to improve any equipment or facilities*

**Drafting note**

The relevant version of the provisions above would be inserted into the Sustainability schedule (Schedule 7) of the MCL.

## Data sharing

### Preamble

The BBP considers the collection of data to be a key pillar of delivering energy and resource efficient buildings as part of the transition to a Net Zero future. Additionally, the CLLS Certificate of Title Eighth Edition 2023 has been updated to include a statement that the Landlord and the Tenant share data relating to Environmental Performance and, as such, it is expected that this will become a market standard position. The BBP is exploring how data sharing between owners and occupiers can be effectively facilitated and hopes to be able to provide additional guidance to landlords, tenants and managing agents in relation to this issue.

***Suggested drafting***

***Light green version***

***Data Sharing***

*(a)The Landlord and the Tenant will share with the other the energy, water and Waste data they hold relating to the Premises [and the Building] [including (in the case of the Landlord) the Common Parts] and such other Environmental Performance data [or Social Impact data] as may be agreed from time to time by the parties. The energy, water and Waste data and any other data the parties agree to share will be shared on a regular basis [but not less frequently than monthly/quarterly/annually], with each other, the Managing Agent and with any third party who the Landlord or the Tenant (or both of them) (acting reasonably) believes needs to receive that data including for the purpose of any reporting or advice subject to the provisions of clause [(b)].*

*(b)The Landlord and the Tenant will keep and will ensure their agents or advisers keep that data confidential except that they are entitled to use that data for any of the following:*

*(i) monitoring and Improving the Environmental Performance [and Social Impact] of the Premises [and the Building];*

*(ii) measuring the Environmental Performance [and Social Impact] of the Premises [or the Building] against any agreed or other targets; and*

*(iii) any reporting required by any Act or regulation or any voluntary certification or rating scheme affecting the Premises [or the Building] or the Landlord or the Tenant or required by any finance arrangements of either party.*

*(c) Where either party or their agents or advisers use the Environmental Performance data [and Social Impact data] for any reporting, that party must ensure that they and their agents or advisers ensure that all data is anonymised.*

*(d) The Landlord and the Tenant must each nominate a point of contact responsible for data sharing and must promptly notify the other where this point of contact changes.*

*(e) Where the Tenant procures its Supplies directly from the providers of those Supplies the Tenant hereby authorises the Landlord to contact those providers direct to obtain consumption data in relation to the Premise and will at the request of the Landlord provide any letter of authority a Supplies provider requires.*

*(f) Nothing in this provision will oblige the Landlord to disclose to the Tenant Environmental Performance data received from any other tenant or occupier of [the Building].*

*(g) The Landlord will not disclose the Environmental Performance data provided by the Tenant to any other tenant or occupier of [the Building].*

**Drafting note**

This clause extends the provisions of paragraph 3 of the Sustainability schedule (Schedule 7) of the MCL as it extends the ability to disclose the shared data to cover possible reporting requirements on the parties and green finance requirements and provides for direct access for the Landlord to utility suppliers supplying the Tenant. This would ease the burden of any data sharing obligation on the Tenant. "**Supplies**" is defined in the MCL to cover all usual utilities. No right of access for the Landlord to review and measure Environmental Performance is included here as paragraph 3.1.1 of part 2 of Schedule 1 of the MCL contains such a right.

This clause would be substituted for paragraph 3 of the Sustainability schedule (Schedule 7) of the MCL.

Only one version of this clause is provided as this issue is of critical importance, is not disproportionately onerous given the importance of sharing this data and should be something the parties are able to agree.

## Metering

### Preamble

The BBP considers the installation of metering to enable efficient environmental data collection to be a key pillar of delivering energy efficient buildings as part of the transition to a Net Zero future. The drafting in this clause should be considered alongside other BBP guidance including the Better Metering Toolkit | Better Buildings Partnership and the RESPONSIBLE PROPERTY MANAGEMENT TOOLKIT | Better Buildings Partnership.

***Suggest drafting***

*The Landlord must (where reasonably practicable) [at its own cost] install equipment (whether fiscal meters, sub-meters, check meters, automatic meter reading devices or other equipment) to measure the energy [and water] consumed at the Premises and the Landlord or its agents (or both of them) 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 installation works provided that installation of the equipment will not adversely affect the Tenant's beneficial use and occupation of the Premises [to any material extent].*

*Where the Landlord installs meters relating to the Premises within the [Common Parts], the Tenant has a right to enter onto the parts of the [Common Parts] where the meters are installed at reasonable times to read the meters.*

*Where reasonably practicable the Landlord will ensure that all metering installed to measure the energy [and water] consumed at the Premises uses smart meter technology which provide half hourly automated meter readings and facilitates communication to third party platforms and will take all necessary steps to ensure the Tenant has direct access to the data generated by the smart meter technology.*

*The Landlord and the Tenant must notify each other as soon as reasonably practicable of any fault or disrepair of any equipment so that the appropriate party can take steps to remedy the disrepair or fault.*

*If the Landlord fails to install metering equipment following a request from the Tenant to do so the Tenant may install (at its own expense unless the Landlord is in breach of its obligations in clause [ ]) within the Premises equipment (whether fiscal meters, sub-meters, check meters, Automatic Meter Reading devices or other equipment) to measure the supply of energy [and water] consumed at the Premises provided that*:

*(a) the carrying out of such installation works neither impairs the continuity of supply nor has any long term adverse effect on the supply of energy [and water] 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 installation works will not cause a breach of the terms of supply to the Building of energy [and water]; and*

*(d) where reasonably practicable all meters installed shall use smart meter technology which provide half hourly automated meter readings and facilitates communication to third party platforms and the Tenant will take all necessary steps to ensure the Landlord has direct access to the data generated by the smart meter technology.*

### Drafting note

Clause 5.5 of the MCL includes extensive entry safeguards which the Landlord must observe when entering the Premises including an obligation to give notice, to cause as little interference to the Tenant's business as reasonably practicable, to cause as little physical damage as reasonably practicable and to make good any damage caused.

This provision should be inserted into the Sustainability schedule (Schedule 7) of the MCL.

The starting point is that the meters are installed at the Landlord's cost. However, the parties are encouraged to consider how the cost of metering should be dealt with. Direct metering will enable both parties to have a better understanding of the energy [and water] consumption at the Premises and this in turn should help them reduce consumption, leading to savings. On this basis sharing the cost of installing meters could be seen as a fairer position. The drafting does not include any provision for the repair of meters as this will be dealt with under the usual repair regime within the lease and you will need to consider whether the meters are part of the Premises or part of the Building Management Systems.

The drafting does not deal with metering of Common Parts or common services but the Landlord's right to install such metering would not usually be restricted by any lease terms although this should be checked.

Since the Landlord is under an absolute obligation to install energy [and water] meters (where it is practical to do so) the clause does not include a right for the Tenant to request meters although it does include a right for the Tenant to install meters. Where the Tenant exercises this right and installs metering equipment because the Landlord is in breach of its obligation to do so then the Tenant will be able to recover the costs from the Landlord because of the Landlord's breach of its obligation. Where it is not practicable for the Landlord to install metering equipment, for example the disruption would amount to a derogation of grant or the Landlord cannot obtain access to the Premises then the Tenant would install the meters at its own cost.

If the obligation on the Landlord to install meters is diluted then you may include the following additional drafting. The Tenant may [choose one of these options]:

OPTION A Request the Landlord to install (at the Tenant's expense) equipment (whether fiscal meters, sub-meters, check meters, automatic meter reading devices or other equipment to measure the energy [and water] consumed at the Premises. The Landlord must, 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 fiscal meters, sub-meters, check meters, Automatic Meter Reading devices or other equipment to measure the energy [and water] consumed at the Premises provided that (a) the carrying out of such works will neither impair the continuity of supply nor have any long term adverse effect on any supply to the Building (b) the consent of the Landlord (if required under clause [the alterations clause]) is first obtained and (c) the carrying out of such installation works will not cause a breach of the terms of any supply to the Building.

## Smart Buildings

### Preamble

Where a landlord or tenant has incurred the expense of installing smart building technology in the Premises or the Building to ensure more granular data collection and/or more responsive and efficient control of systems in the Building or the Premises it is helpful to both parties if nothing prevents the efficient use of this technology.

### *Suggested drafting*

*Where the Building [or the Premises] incorporates smart building technology being any advanced technology which obtains and collates data and uses that data to identify measures to optimize the performance of [the Building] [or the Premises] the Tenant must ensure that it complies with the Digital Protocol Policy and the Landlord and the Tenant must not do anything which adversely affects the efficient operation of any smart building technology.*

### Drafting note

This provision should be inserted into the Sustainability schedule (Schedule 7) of the MCL.

## Extending the Landlord's right to do works

### Preamble

This clause is designed to deal with a situation where a landlord and the relevant tenants in the Building cannot agree on the works to be done to improve Environmental Performance or the EPC Rating of the Building or the Premises, yet the Landlord wishes to do works which will Improve the Environmental Performance. These may be works in the Common Parts 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 so that action can be taken to Improve the Environmental Performance or the EPC Rating of the Building or Premises during the term of a lease given the urgent need to reduce greenhouse gas emissions over this decade.

Landlords should be aware however that use of this clause in a form which provides landlords with an absolute right to carry out such works in the Premises (or where there would otherwise be restrictions on its ability to carry out works to the Common Parts) will mean that the Landlord cannot use a lack of the Tenant's consent to rely on the "consent" exemption from compliance with the minimum energy efficiency standards required by the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 as amended ("the MEES Regulations"). Where the clause used makes the Landlord's right to do works conditional on theTenant's consent which cannot be unreasonably withheld, if the Tenant withholds consent unreasonably, it may also not be possible to rely to rely on the "consent" exemption. It should however be noted that even where the Landlord does not reserve rights to do works which will Improve the Environmental Performance, in order for the consent exemption to apply the Landlord will need to have made reasonable efforts to obtain necessary third-party consents (including the Tenant's consent) to do relevant works. Whatever the wording of the lease the Tenant and other relevant third parties may in response provide consent in which event the exemption will not apply.

Further information about the MEES Regulations is in Appendix 1 and advice should be sought where necessary.

The draft clause does not seek to deal with the costs of such work. The issue of landlords bearing the costs of Improvements in the Environmental Performance of buildings without any ability to recover all or part of the costs of these works whilst tenants enjoy cost savings as a result of the works has been referred to as the "split incentive" and is seen as an obstacle to such improvement works. Increasingly the parties' interests are aligned and both are equally concerned to Improve the Environmental Performance, particularly the energy efficiency of the Building and the Premises for cost saving and climate change mitigation reasons. If the works will result in cost savings by way of reduced energy or other utility costs for the Tenant, the BBP considers that it is reasonable for the Tenant to contribute to the costs of the works to the extent that it will enjoy cost savings. How this is achieved should be a matter for agreement between the parties.

Where the works are to the Premises then the costs of these are unlikely to be recoverable under a service charge and consideration should be given to including any cost recovery arrangement agreed by the parties in this clause entitling the Landlord to carry out these works.

There are a number of international examples of cost recovery principles in this context.

The Australian BBP (BBP Leasing Standard Template Clauses | Better Buildings Partnership) includes a provision that the Tenant will contribute to the cost of relevant improvements provided this contribution "does not exceed a reasonable estimate of the cost savings to be made by the Tenant as a consequence of the works".

The Green Lease Leaders initiative in the US https://www.greenleaseleaders.com/wp-content/uploads/2022/02/Green-Lease-Leaders-Landlords-Reference-Guide-FINAL.pdf seeks to recognise via a ratings system landlords and tenants who have implemented energy efficiency in leased spaces. It suggests the following clause to deal with cost recovery of improvement works: "*Landlord may include the costs of certain capital improvements [intended to] [that] improve energy efficiency in operating expenses of tenant space. The amount passed through by Landlord to the Tenant in any one year must not exceed the prorated capital cost of that improvement over the expected life cycle term of that improvement [and must not exceed in any year the amount of operating expenses actually saved by that improvement]. Interest/the cost of capital can be included.*"

The Energy Aligned Clause (eac_overview.pdf (nyc.gov)) developed at the instigation of the City of New York in 2010 to solve the split incentive obstacle follows similar lines but restricts annual recovery from tenants to 80% of predicted energy cost savings to provide a buffer for the Tenant against underperformance of the works (+/- 20% against predicted savings was found to be the norm based on industry experience).

The Institute for Market Transformation in the US has published Green Lease Language Examples - IMT which include a number of examples of cost recovery clauses for the cost of improvement works.

The BBP is continuing to explore ways in which the costs of works which Improve the Environmental Performance of the Premises can be shared in a way which is fair for both parties.

**Suggested drafting**

**Light green version**

*The Landlord is entitled to enter the Premises to carry out [at the Landlord's expense] works intended to Improve the Environmental Performance of the Premises [and the Building] or improve the EPC Rating [or any Environmental Rating] of the Premises [and the Building] where the Tenant consents.*

*The Landlord is entitled to carry out works to the [Common Parts][ and the Building Management Systems], which are intended to Improve the Environmental Performance of the Building or improve the EPC Rating or any Environmental Rating of the Building notwithstanding any interruption in the provision of services by the Landlord provided always that the Landlord must use reasonable endeavours to minimise any disruption to the Tenant and any interference with [services][the Services] it has covenanted to provide.*

**Drafting note**

The Landlord must (on a case by case basis) consider whether the works or the way they are carried out are so extensive or disruptive that they could be a derogation from grant or a breach of the Landlord's quiet enjoyment obligation in the lease. Both of these provide important safeguards for tenants concerned about disruption to their business caused by any work a landlord may carry out under this clause. In addition the MCL includes protection for tenants including:

- Clause 2.4.8 implies that where the consent or approval of a party is required that consent or approval will not be unreasonably withheld or delayed; and
- Clause 5.5 of the MCL includes extensive entry safeguards which the Landlord must observe when entering the Premises including an obligation to give notice, to cause as little interference to the Tenant's business as reasonably practicable, to cause as little physical damage as reasonably practicable and to make good any damage caused. It also includes a requirement for tenant approval to the location and other aspects of the works. Landlords should be aware of this and might want to consider whether aspects of this should be amended if they create obstacles to Improving the Environmental Performance.

This clause can be added in its entirety to the Sustainability schedule (Schedule 7) of the MCL in which case paragraph 3.3. of part 2 of Schedule 1 of the MCL should be deleted or, the first paragraph could be added to the rights of entry at paragraph 3.1. of part 2 of Schedule 1 and the second paragraph could be added to paragraph 4 of part 2 of Schedule 1 of the MCL. Depending on any provisions for costs included in this clause, clause 4.6.3 of the MCL should be deleted.

Generally, the Landlord would be free to carry out improvement works to the Common Parts or Building Management Systems 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 that 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. Paragraph 4.1 of part 2 of Schedule 1 of the MCL allows the Landlord to close off or restrict access to the Common Parts provided an alternative is provided.

This version of the clause requires the Tenant's consent (not to be unreasonably withheld). This would allow refusal of consent, where reasonable, on wider grounds than whether or not the works would Improve the Environmental Performance or the EPC Rating. The clause avoids giving the Tenant absolute discretion in providing its consent or requiring the Tenant to bear the whole cost of works to the Building or Premises if such consent is given. Such an approach does not best ensure a Landlord will be able to carry out works or that a Tenant will consent to works. If the Tenant consents to the works, it will remove any exemption from any required MEES compliance based on Tenant consent, in respect of any elements of work necessary to improve the EPC for the Premises or the Building. If other third-party consents would still be required for the work and could not reasonably be obtained the consent exemption would still apply in relation to the proposed work. If the Tenant reasonably refuses consent, then to the extent the works to the Premises are required to achieve the minimum EPC Rating for lawfully letting the Premises, the consent exemption can be relied on.

As stated above the BBP considers that it is reasonable for the Tenant to contribute to the costs of the works to the extent that it will enjoy cost savings.

**Medium green version**

*The Landlord is entitled to enter the Premises to carry out [at the Landlord's expense] works intended to Improve the Environmental Performance of the Premises [and the Building] or improve the EPC Rating or any Environmental Rating of the Premises [and the Building] which the Tenant acting reasonably and without delay agrees would Improve the Environmental Performance of the Premises [or the Building] or improve the EPC Rating [or any Environmental Rating] of the Premises [or the Building].*

*The Landlord is entitled to carry out works to the [Common Parts][and the Building Management Systems], which are intended to Improve the Environmental Performance of the Building or improve the EPC Rating or any Environmental Rating of the Building notwithstanding any interruption in the provision of services by the Landlord provided always that the Landlord must use reasonable endeavours to minimise any disruption to the Tenant and any interference with [services][the Services] it has covenanted to provide.*

**Drafting Note**

The Landlord must (on a case by case basis) consider whether the works or the way they are carried out are so extensive or disruptive that they could be a derogation from grant or a breach of the Landlord's quiet enjoyment obligation in the lease. Both of these provide important safeguards for tenants concerned about disruption to their business caused by any work a landlord may carry out under this clause. In addition the MCL includes protection for tenants including:

- Clause 2.4.8 implies that where the consent or approval of a party is required that consent or approval

will not be unreasonably withheld or delayed; and

- Clause 5.5 of the MCL includes extensive entry safeguards which the Landlord must observe when entering the Premises including an obligation to give notice, to cause as little interference to the Tenant's business as reasonably practicable, to cause as little physical damage as reasonably practicable and to make good any damage caused. It also includes a requirement for tenant approval to the location and other aspects of the works. Landlords should be aware of this and might want to consider whether aspects of this should be amended if they create obstacles to Improving the Environmental Performance.

This clause can be added in its entirety to the Sustainability schedule (Schedule 7) of the MCL in which case paragraph 3.3. of part 2 of Schedule 1 of the MCL should be deleted or, the first paragraph could be added to the rights of entry at paragraph 3.1. of part 2 of Schedule 1 and the second paragraph could be added to paragraph 4 of part 2 of Schedule 1 of the MCL. Depending on any provisions for costs included in this clause, clause 4.6.3 of the MCL should be deleted.

Generally, the Landlord would be free to carry out improvement works to the Common Parts or Building Management Systems 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. Paragraph 4.1 of part 2 of Schedule 1 of the MCL allows the Landlord to close off or restrict access to the Common Parts provided an alternative is provided.

The light green version of this clause means the Landlord can only carry out the works with the Tenant's consent which is not to be unreasonably withheld. So, the Tenant could accept that the works Improve the Environmental Performance of the Building but still withhold consent for other reasons. The medium green version means that the Tenant can only withhold consent if it does not agree that the works will Improve the Environmental Performance of the Building. If it does accept this it can't withhold consent for any other reason.

If the Tenant agrees that the works will Improve the Environmental Performance of the Premises or the Building then the Landlord would be entitled as against the Tenant to do the works. Unless other third-party consents would still be required and could not be obtained for the work, the MEES consent exemption would not apply in relation to the proposed work.

As stated above the BBP considers that it is reasonable for the Tenant to contribute to the costs of the works to the extent that it will enjoy cost savings.

**Dark green version**

*The Landlord is entitled to enter the Premises to carry out [at the Landlord's expense] works intended to Improve the Environmental Performance of the Premises [and the Building] or improve the EPC Rating [or any Environmental Rating] of the Premises [and the Building].*

*The Landlord is entitled to carry out works to the [Common Parts] [and the Building Management Systems], which are intended to Improve the Environmental Performance of the Building [and/or the Premises] or improve the EPC Rating or any Environmental Rating of the Building [and/or the Premises]notwithstanding any interruption in the provision of services by the Landlord provided always that the Landlord must use reasonable endeavours to minimise any disruption to the Tenant and any interference with [services][the Services] it has covenanted to provide.*

**Drafting Note**

The Landlord must (on a case by case basis) consider whether the works or the way they are carried out are so extensive or disruptive that they could be a derogation from grant or a breach of the Landlord's quiet enjoyment obligation in the lease. Both of these provide important safeguards for tenants concerned about disruption to their business caused by any work a landlord may carry out under this clause. In addition the MCL includes protection for tenants including:

- Clause 2.4.8 implies that where the consent or approval of a party is required that consent or approval will not be unreasonably withheld or delayed; and
- Clause 5.5 of the MCL includes extensive entry safeguards which the Landlord must observe when entering the Premises including an obligation to give notice, to cause as little interference to the Tenant's business as reasonably practicable, to cause as little physical damage as reasonably practicable and to make good any damage caused. It also includes a requirement for tenant approval to the location and other aspects of the works. Landlords should be aware of this and might want to consider whether aspects of this should be amended if they create obstacles to Improving the Environmental Performance.

This clause can be added in its entirety to the Sustainability schedule (Schedule 7) of the MCL in which case paragraph 3.3. of part 2 of Schedule 1 of the MCL should be deleted or, the first paragraph could be added to the rights of entry at paragraph 3.1. of part 2 of Schedule 1 and the second paragraph could be added to paragraph 4 of part 2 of Schedule 1 of the MCL. Depending on any provisions for costs included in this clause, clause 4.6.3 of the MCL should be deleted.

Generally, the Landlord would be free to carry out improvement works to the Common Parts or Building Management Systems 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. Paragraph 4.1 of part 2 of Schedule 1 of the MCL allows the Landlord to close off or restrict access to the Common Parts provided an alternative is provided.

This version of the clause gives the Landlord the absolute right (subject to derogation from grant) to carry out works to the Premises and the Common Parts to Improve the Environmental Performance of the Premises or the Building (as appropriate) and on the basis it is an absolute right it is categorised as "dark green" in that it secures the right to Improve the Environmental Performance without the need for Tenant's consent. As the clause does not require the Tenant's consent to the works, it will remove any exemption from any required MEES compliance based on the Tenant's consent, in respect of any elements of work necessary to improve the EPC for the Premises or the Building (as appropriate). If other third-party consents would still be required for the work and could not reasonably be obtained the consent exemption would still apply in relation to the proposed work.

As stated above the BBP considers that it is reasonable for the Tenant to contribute to the costs of the works to the extent that it will enjoy cost savings. However, where the parties cannot agree a contribution by the Tenant then the Landlord should have the right to carry out improvement works to the Premises if it wishes to (subject to the entry protections in the MCL and usual derogation from grant protection for the Tenant). 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.

This version of the clause could be more specific if the Landlord and the Tenant agreed the works and the apportionment of the cost of the works and included provisions to reflect that agreement in the lease.

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

### Preamble

Leases of part will usually contain Landlord's obligations to maintain and repair the structure and exterior of the Building, the Common Parts and the Building Management Systems and will not include constraints as to works it can do to these parts subject to complying with any obligations in the lease e.g. to provide support and shelter or specified services. The Tenant may want to prevent the Landlord acting in a way which prejudices the Environmental Performance of the Building. The following drafting provides different levels of obligation on the Landlord to take account of the environmental impact of works of repair, maintenance or other works by the Landlord.

### Suggested drafting

### Light green version

*Except in the case of emergency, the Landlord must not carry out any works to the Premises [or the Building and Building Management Systems] which would be reasonably expected to adversely affect the Environmental Performance, or any EPC Rating or any Environmental Rating of the Premises [or the Building] unless it first obtains the written consent of the Tenant to such works.*

### Drafting note

Clause 2.4.8 of the MCL implies that consent will not be unreasonably withheld.

This provision could be added to the Sustainability schedule (Schedule 7) or to the Landlord's covenants at clause 5 of the MCL.

### Dark green version

*Except in the case of emergency, the Landlord must not carry out any works to the Premises [or the Building and Building Management Systems]which would be reasonably expected to adversely affect the Environmental Performance, or any EPC Rating or any Environmental Rating of the Premises [or the Building].*

### Drafting Note

This provision could be added to the Sustainability schedule (Schedule 7) or to the Landlord's covenants at clause 5 of the MCL.

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 Building Management Services that serve 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). The Tenant may want to prevent the Landlord acting in a way that prejudices the Environmental Performance ,the EPC Rating or other Environmental Rating of the Premises or of the Building. A new EPC will only be required if works are done which create a greater or lesser number of parts designed or altered for separate use than it previously had where the modification includes the provision or extension of any of the fixed services for heating, hot water, air conditioning or mechanical ventilation. However where works are done which do not trigger the need for a new EPC, on expiry of the validity of the existing EPC those works have the potential to result in a lower EPC Rating in any new EPC.

The Landlord should welcome obligations as to the mode in which works are carried out which protect the Environmental Performance of the Building and which make the costs of such works likely to be recoverable under service charge provisions where the underlying works are items which can be recovered under service charge provisions. However, where such works are improvements the cost of the works and any additional expense these provisions may involve may not be recoverable.

## Addition to clause governing Tenant's alterations

### Preamble

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

For details of when a new EPC would be required see the drafting note to the Restrictions on the Landlord's right to do works clause. Even where the Tenant's alterations do not require a new EPC to be obtained, they may have an adverse effect on any new EPC obtained after the expiry of the existing EPC.

The clause does not expressly deal with the Tenant's initial fit-out works. These are often dealt with in an agreement for lease and will usually be the subject of a Licence for Alterations where the works will be agreed in advance of exchange of the agreement for lease. Agreements for lease may also require compliance with a Landlord's Fit -Out Guide or similar document. Consideration should be given to incorporating the provisions of this clause in any document governing the Tenant's fit out.

The Government has consulted on proposals for a six month exemption from the requirement to produce an EPC which meets the minimum energy efficiency standard in the case of shell and core lettings so that the Tenant's fit-out will be assessed for the purposes of the EPC. Landlords will want to ensure the Tenant's fit-out meets the requirements for the current and any proposed minimum EPC Rating. Consideration should be given to further provisions which require a fit-out:

- to result in a specified minimum EPC Rating; and
- to be designed and to operate to minimise energy and water consumption and Waste.

### Suggested drafting

#### Light green version

*The Tenant must not make any alterations or additions to the Premises unless it has first given to the Landlord drawings and specifications and any other information in sufficient detail for an accurate assessment to be made of its effect on the Environmental Performance, or any EPC Rating or any Environmental Rating of the Premises [or the Building].*

*The Tenant must not carry out any alterations or additions to the Premises which would be reasonably expected to adversely affect the Environmental Performance, or any EPC Rating or any Environmental Rating of the Premises [and the Building] unless it first obtains the written consent of the Landlord to such alterations (even if that consent is not otherwise required by this Lease).*

*On completion of any alterations or additions the Tenant must give to the Landlord as built drawings and specifications and any other information in sufficient detail for an accurate assessment to be made of the effect of the works on the Environmental Performance or any EPC Rating or any Environmental Rating of the Premises [or the Building].*

### Drafting Note

If using MCL you will need to delete clause 4.11.2 of the MCL and replace it with this clause.

Clause 2.4.8 of the MCL implies that consent will not be unreasonably withheld.

The definition of Premises in the MCL includes Conducting Media and Landlord's plant, equipment and fixtures exclusively serving the Premises and all Tenant's fixtures. It may also include the Tenant's fire detection systems.

**Medium green Version**

*The Tenant must not make any alterations or additions to the Premises unless it has first given to the Landlord drawings and specifications and any other information in sufficient detail for an accurate assessment to be made of its effect on the Environmental Performance or any EPC Rating or any Environmental Rating of the Premises [or the Building].*

*The Tenant must not carry out any alterations or additions to the Premises which would be reasonably expected to adversely affect the Environmental Performance, or any EPC Rating or any Environmental Rating of the Premises [and the Building].*

*On completion of any alterations or additions the Tenant must give to the Landlord as built drawings and specifications and any other information in sufficient detail for an accurate assessment to be made of effect of the works on the Environmental Performance or any EPC Rating or any Environmental Rating of the Premises [or the Building].*

**Drafting Note**

If using MCL you will need to delete clause 4.11.2 of the MCL and replace it with this clause.

Clause 2.4.8 of the MCL implies that consent will not be unreasonably withheld.

The definition of Premises in the MCL includes Conducting Media and Landlord's plant, equipment and fixtures exclusively serving the Premises and all Tenant's fixtures. It may also include the Tenant's fire detection systems.

Reference in this clause to "any EPC" is deliberate as it is intended to catch both the current and a future EPC.

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, or a requirement for Landlord's consent to most alterations, such consent not to be unreasonably withheld). Sometimes the lease gives 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. This clause acts as an absolute prohibition on alterations which might reasonably be expected to have an adverse effect on the Environmental Performance or the current or future EPC Rating (or both of them) or any Environmental Rating.

## Expansion of the Tenant's ability to do alterations which Improve the Environmental Performance or EPC Rating

**Preamble**

This clause will be unnecessary where the Tenant has freedom to make any alterations with the Landlord's prior consent.

***Suggested Drafting***

*The Tenant may, with the Landlord's consent carry out alterations to the Premises which [are designed to][will] Improve the Environmental Performance or any EPC Rating of or any Environmental Rating of the Premises [and 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 Premises [and the Building]; and*

*(b) are not structural alterations.*

**Drafting Note**

Clause 2.4.8 of the MCL implies that consent will not be unreasonably withheld.

For domestic property the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 contain a detailed process (in regulations 8 to 16) under which certain tenants can seek landlord's consent to certain energy efficiency improvement works regardless of the terms of any lease.

## Energy Performance Certificates (EPCs)

### Preamble

The BBP considers it is important, given the variable quality of EPCs, that there should be reasonable provisions to ensure that high quality and reliable EPCs are obtained. Given the significant liabilities faced by landlords under the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 as amended ("the MEES Regulations") it is reasonable for landlords to have some control over the commissioning of any EPC. Only one version of this important clause is provided.

***Suggested drafting***

*The Tenant must not commission an EPC in respect of the Premises unless required to do so by the Energy Performance of Buildings (England and Wales) Regulations 2012. If the Tenant is required to commission an EPC, the Tenant must (at the Landlord's option) commission an EPC from an assessor approved by the Landlord or pay the Landlord's costs of commissioning an EPC for the Premises.*

*The Tenant must co-operate with the Landlord, so far as is reasonably necessary, to allow the Landlord to commission any EPC for the Premises and:*

(a) *provide the Landlord (at the Landlord's cost) with copies of any plans or other information held by the Tenant that would assist in commissioning that EPC; and*

(b) *allow such access to the Premises to any energy assessor appointed by the Landlord as is reasonably necessary to inspect the Premises for the purposes of preparing any EPC.*

*The Tenant must give the Landlord written details on request of the unique reference number of any EPC the Tenant commissions in respect of the Premises.*

*The Landlord must give the Tenant written details on request of the unique reference number of any EPC the Landlord commissions in respect of the Premises.*

*The Tenant must not obtain or commission an EPC in respect of the Building.*

*The Tenant must not do or permit anything which may adversely affect the EPC Rating of the Premises [or the Building].*

### Drafting note

This clause mirrors clause 6.7 of the MCL with the addition of the final two paragraphs.

Clause 2.5.3 of the MCL implies that an obligation not to do something includes an obligation not to permit another person to do it.

The final paragraph is a general "sweeper" clause for the Landlord's protection and goes beyond alterations, which is covered elsewhere in this toolkit (Addition to clause governing Tenant's alterations).

## Recycling of Waste

***Preamble***

A significant amount of Waste from buildings is sent to landfill. This includes Waste from day to day operational activities and Waste from works undertaken by landlords and tenants in a building. The objective of this clause is to require landlords and tenants to minimise the amount of Waste that is sent to landfill and increase the amount that is Salvaged.

Separate drafting is provided in the toolkit (Yield Up) to specifically address Waste produced by a tenant on yield up. The drafting in this clause (Recycling of Waste) is wider and includes obligations on landlords and tenants in relation to Waste produced through operational activities and from works in the Building at any time.

Each of the template clauses can be made "greener" by making the obligations absolute obligations rather than reasonable endeavours obligations.

The light green version of this clause is a simple obligation to reduce the amount of Waste that is sent to landfill and increase the amount of Waste that is Salvaged.

The medium and dark green versions of the clause refer to a Waste Policy. A non-exhaustive list of what should be covered by the Waste Policy could be included in the drafting. This could for example include details of: local businesses, charities and education facilities which are able to Salvage Waste; strip-out contractors which are aligned with the Salvage Target; how landlords and tenants in the Building will maintain and capture data on the amount of Waste which is Salvaged; and a circular economy strategy.

Although the light green version of this clause is silent on data sharing the general Data sharing provisions in this toolkit do apply to Waste. The medium and dark green versions of this clause include more detailed data sharing provisions. This data can then be used to reduce the amount of Waste that is sent to landfill and increase the amount of Waste that is Salvaged and for a specified Waste Salvage Target to be met.

The Salvage Target percentage will be for negotiation and the appropriate percentage is likely to vary depending on the location of a building and the facilities available locally. Whilst the clauses are drafted so as to provide flexibility in how Waste reduction is achieved a sensible minimum obligation is the introduction of a suitable Waste segregation system in the Building or via the waste management provider on the Landlord in multi-let premises or on the Tenant in a single let premises.

***Suggested Drafting***

**Light green version**

*The Landlord in respect of Waste it produces and the Tenant in respect of Waste it produces must [use [all] reasonable endeavours to]:*

a. *minimise the amount of Waste which is sent to landfill;*

b. *Salvage as much Waste as reasonably practicable; and*

c. *provide or procure an appropriate Waste segregation system and that Waste is segregated in accordance with the Waste segregation system,*

*and in the case of the Tenant, the Tenant must properly use any Waste segregation system provided by the Landlord.*

**Medium green version**

*The Landlord in respect of Waste it produces and the Tenant in respect of Waste it produces must [use [all] reasonable endeavours to]:*

a. *minimise the amount of Waste which is sent to landfill;*

b. *Salvage as much Waste as reasonably practicable;*

c. *capture and promptly share with each other data relating to the amount of Waste which is removed from the Premises [or the Building], the amount of Waste which is Salvaged and the amount of Waste which is sent to landfill;*

d. *work together using the data captured and shared under clause [c] to reduce the amount of Waste that is sent to landfill and increase the amount of Waste that is Salvaged;*

e. *deal with Waste in accordance with any Waste Policy in place for the Building from time to time; and*

f. *provide or procure an appropriate Waste segregation system which maximises the amount of Waste that can be Salvaged and that Waste is segregated in accordance with the Waste segregation system,*

*and in the case of the Tenant, the Tenant must properly use any Waste segregation system provided by the Landlord.*

**Dark green version**

a. *The Landlord and the Tenant acknowledge their joint goal to achieve the Salvage Target in relation to all Waste.*

b. *The Landlord must at all times maintain a Waste Policy and must make a copy of the Waste Policy available to the Tenant each time it is updated.*

c. *The Landlord in respect of Waste it produces and the Tenant in respect of Waste it produces must [use [all] reasonable endeavours to]:*

   i. *minimise the amount of Waste which is sent to landfill*

   ii. *Salvage as much Waste as reasonably practicable;*

   iii. *achieve the Salvage Target;*

   iv. *capture and promptly share with each other data relating to the amount of Waste which is removed from the Premises [or the Building], the amount of Waste which is Salvaged and the amount of Waste which is sent to landfill;*

   v. *work together using the data captured and shared under clause c(iv) to reduce the amount of Waste that is sent to landfill and increase the amount of Waste that is Salvaged;*

   vi. *deal with all Waste in accordance with the Waste Policy; and*

   vii. *provide or procure an appropriate Waste segregation system which maximises the amount of Waste that can be Salvaged (which must as a minimum include the segregation of food waste, paper/cardboard, glass and plastic) and ensure that Waste is segregated in accordance with the Waste segregation system,*

*and in the case of the Tenant, the Tenant must properly use any Waste segregation system provided by the Landlord.*

**Drafting note**

This provision could be added to the Sustainability schedule (Schedule 7) of the MCL.

## Yield Up

### Preamble

The objectives of this clause are: (a) for some account to be taken of Environmental Performance in the consideration of whether reinstatement of all lawful tenant's alterations is required with the aim of reducing the amount of Waste generated on yield up and (b) where Waste is generated on yield up, to minimise the amount that is sent to landfill and maximise the amount that is Salvaged.

Whether or not it is appropriate to require alterations to be reinstated at the end of the term (particularly in respect of alterations with the express purpose of improving the Environmental Performance of the Premises) should, ideally, be considered by the parties as part of the application for consent to those alterations and documented in any licence to alter. However, it can be difficult to decide what will be appropriate in the future and so paragraph (a) of this clause provides that the Landlord is to give due consideration to whether reinstatement is appropriate at the end of the term.

There are two elements to the proposed clause:

1. **Paragraph (a)**

   The BBP recognises that a blanket requirement to reinstate can lead to unnecessary Waste and inefficiencies and possibly affect Environmental Performance in ways beyond the creation of Waste by the removal. However, the Landlord should not be prevented from requiring the Tenant to remove relevant alterations where the Landlord judges it necessary for re-use or re-letting the Premises.

   Paragraph(a) (which is the same in each version of the clause) seeks to strike a balance between these two conflicting positions and should replace clause 4.13.1 (d) of the MCL. Paragraph (a) requires reinstatement of all alterations unless the Landlord serves notice to say that reinstatement is not required. When making this decision the Landlord must consider the environmental impact of requiring reinstatement but only where its intention for the re-use or re-letting of the Premises does not require reinstatement. This replaces the requirement for all alterations to be reinstated unless and to the extent that the Landlord and Tenant otherwise agree which is the position in clause 4.13.1 (d) of the MCL. If no notice is served then the Tenant must reinstate. Given it is not in the Landlord's interest to adversely affect the Environmental Performance of its property landlords should consider that this is an appropriate move away from the market standard position on alterations.

   Paragraph (a) includes a disregard of Waste in the context of the obligation to consider the environmental impact because increased Waste is a probable consequence of all reinstatement. However, although excluded from paragraph (a) responsible landlords are encouraged to consider minimising Waste when they consider their approach to reinstatement.

   **Paragraph (b)**

   Paragraph (b) of this clause (which gets progressively darker) applies where tenants undertake reinstatement works on yield up of the Lease.

   The light green version of this clause is a simple obligation to minimise the amount of Waste that is sent to landfill and Salvage as much Waste as is reasonably practicable.

   The medium green version of this clause also requires the Tenant to share data and for the Tenant to comply with any Waste Policy for the Building.

   The dark green version of this clause also requires the Landlord to prepare a Waste Policy, for the parties to agree a Waste Salvage Plan and for a specified Salvage Target to be met. The Salvage Target percentage will be for negotiation and the appropriate percentage is likely to vary depending on the location of a building and the facilities available locally.

   Each of the template clauses can be made "greener" by making the obligations absolute obligations rather than reasonable endeavours obligations.

Separate drafting is provided in this toolkit (Recycling of Waste*)* to address Waste generated from all activities in the building (and not just Waste on yield up). Where both clauses are to be included, the parties should consider any overlap between the clauses.

The "BBP Stripout Waste Guidelines" *Version 1.1 dated July 2018* is a useful reference guide for those looking for further information on this topic (prepared by BBP Australia).

**Suggested Drafting**

**Light green version**

(a) *[By the End Date the Tenant must have removed] all Permitted Works* unless and to the extent that the *Landlord gives [formal] notice to the Tenant not later than 3 months before the End Date specifying which Permitted Works should not be removed. When considering whether any Permitted Works should not be removed the Landlord will have due regard to any adverse impact on the Environmental Performance of the Premises (disregarding Waste generated by the removal of any Permitted Works for these purposes) of the removal of any Permitted Works except where removal of Permitted Works is required due to the Landlord's intentions in respect of the use or re-letting of the Premises [or the Building] after the End Date*

(b) *When complying with its obligations to remove the Permitted Works in accordance with clause [4.13.1 (d) of the MCL] the Tenant must [use [all] reasonable endeavours to]:*

*(i) minimise the amount of Waste sent to landfill; and*

*(ii) Salvage as much Waste as reasonably practicable*.

**Drafting note**

Paragraph (a) of this clause replaces clause 4.13.1 (d) of the MCL and the words in square brackets at the start can then be deleted as they are part of clause 4.13.1 of the MCL.

Clause 2.3.3 of the MCL explains that reference to formal notice is to a notice which has been served in accordance with the formalities set out in clause 6.4 of the MCL.

Paragraph (b) of this clause can be added as a new paragraph in clause 4.13 of the MCL or in the Sustainability schedule (Schedule 7) of the MCL.

**Medium green version**

(a) *[By the End Date the Tenant must have removed] all Permitted Works* unless and to the extent that the *Landlord gives [formal] notice to the Tenant not later than 3 months before the End Date specifying which Permitted Works should not be removed. When considering whether any Permitted Works should not be removed the Landlord will have due regard to any adverse impact on the Environmental Performance of the Premises (disregarding Waste generated by the removal of any Permitted Works for these purposes) of the removal of any Permitted Works except where removal of Permitted Works is required due to the Landlord's intentions in respect of the use or re-letting of the Premises [or the Building] after the End Date*

(b) *When complying with its obligations to remove the Permitted Works in accordance with clause [4.13.1 (d) of the MCL] the Tenant must [use [all] reasonable endeavours to]:*

*(i) minimise the amount of Waste sent to landfill;*

*(ii) Salvage as much Waste as reasonably practicable;*

*(iii) capture and promptly share with the Landlord data relating to the amount of Waste removed from the Premises [or the Building], the amount of Waste Salvaged and the amount of Waste sent to landfill; and*

*(iv) deal with Waste in accordance with any Waste policy in place for the Premises [or the Building] from time to time.*

**Drafting note**

Paragraph (a) of this clause replaces clause 4.13.1 (d) of the MCL and the words in square brackets at the start can then be deleted as they are part of clause 4.13.1 of the MCL.

Clause 2.3.3 of the MCL explains that reference to formal notice is to a notice which has been served in accordance with the formalities set out in clause 6.4 of the MCL.

Paragraph (b) of this clause can be added as a new paragraph in clause 4.13 of the MCL or in the Sustainability schedule (Schedule 7) of the MCL.

**Dark green version**

(a) *[By the End Date the Tenant must have removed] all Permitted Works* unless and to the extent that the *Landlord gives [formal] notice to the Tenant not later than 3 months before the End Date specifying which Permitted Works should not be removed. When considering whether any Permitted Works should not be removed the Landlord will have due regard to any adverse impact on the Environmental Performance of the Premises (disregarding Waste generated by the removal of any Permitted Works for these purposes) of the removal of any Permitted Works except where removal of Permitted Works is required due to the Landlord's intentions in respect of the use or re-letting of the Premises [or the Building] after the End Date*

(b) *Salvage of Waste*

*(i) The Landlord and the Tenant acknowledge their joint goal to achieve the Salvage Target in relation to all Waste removed from the Premises [or the Building] as part of any reinstatement and strip-out works at the End Date.*

*(ii) [As soon as reasonably practicable and in any event no later than [6] months] prior to the End Date, the Landlord and the Tenant must use [all] reasonable endeavours to agree a Waste Salvage Plan];*

*(iii) The Landlord must at all times maintain a Waste Policy and must make a copy of the Waste Policy available to the Tenant each time it is updated;*

*(iv) When complying with its obligation in clause [4.13 of the MCL] the Tenant must [use [all] reasonable endeavours to]:*

- *minimise the amount of Waste sent to landfill;*
- *Salvage as much Waste as reasonably practicable;*
- *comply with the Waste Salvage Plan;*
- *achieve the Salvage Target;*
- *capture and provide the Landlord with data relating to the amount of Waste removed from the Premises [or the Building], the amount of Waste Salvaged and the amount of Waste sent to landfill; and*
- *deal with all Waste in accordance with the Waste Policy.*

**Drafting note**

Paragraph (a) of this clause replaces clause 4.13.1 (d) of the MCL and the words in square brackets at the start can then be deleted as they are part of clause 4.13.1 of the MCL.

Clause 2.3.3 of the MCL explains that reference to formal notice is to a notice which has been served in accordance with the formalities set out in clause 6.4 of the MCL.

Paragraph (b) of this clause can be added as a new paragraph in clause 4.13 of the MCL or in the Sustainability schedule (Schedule 7) of the MCL.

## Circular Economy Principles for Landlord and Tenant Works

**Preamble**

Where the Tenant is carrying out any form of works to the Premises, whether maintenance, repair, initial fit-out, alterations or reinstatement or the Landlord is carrying out works to the Building or the Premises it is important to both parties that those works are carried out in a way and with materials that minimise the use of resources and which avoid Waste and greenhouse gas emissions. The UK Green Building Council's Toolkit for a Circular Economy Circular-Economy-System-Enablers-Report.pdf (ukgbc.org) identifies green lease provisions as an enabler in achieving these goals. The Chancery Lane Project, has developed a clause Sustainable and Circular Economy Principles in Leasing Arrangements for Repairs and Alterations to deal with the application of circular economy principles during the life of a lease. The drafting below draws on that drafting.

***Suggested drafting***

**Light green version**

*When carrying out any works to the Premises [or the Building] the Landlord and the Tenant must use reasonable endeavours to:*

*a) use the following where they are available and to the extent that to do so would not result in a material increase in cost:*

*i. materials, products or components which can be reused again for the purpose for which they were previously used, or which have been removed from another building or site and can be reused without substantial modification and if not available or appropriate or if such materials contain more Embodied Carbon than the alternatives below;*

*ii. materials, products or components which been produced in a way which minimises Embodied Carbon and which are recyclable or reusable and if not available or appropriate or if such materials contain more Embodied Carbon than the alternatives below;*

*iii. materials or products which have been recycled and where relevant re-processed into the same or different products or materials and if not available or appropriate or if such materials contain more Embodied Carbon than the alternatives below; and*

*iv. materials, products or components which can be recycled;*

*Provided that if the nature and scale of the proposed works or the project of which they form a part mean that it is disproportionate to assess the Embodied Carbon of the alternative materials the words "or if such materials contain more Embodied Carbon than the alternatives below" are deemed to be deleted;*

*b) ensure that any fixtures, fittings, plant and machinery installed (whether by way of replacement or not) are resource efficient and in the case of replacement is at least as resource efficient as or more resource efficient than the replaced item;*

*c) comply with the provisions of this Lease at clause [Recycling of Waste] relating to Waste; and*

*d) carry out the works using methods of working which minimise the use of energy and water and the production of Greenhouse Gas Emissions to the extent that to do so will not result in any material increase in cost.*

**Medium green version**

*When carrying out any works to the Premises [or the Building] the Landlord and the Tenant must:*

*a) use the following where they are available:*

*i. materials, products or components which can be reused again for the purpose for which they were previously used, or which have been removed from another building or site and can be reused without substantial modification and if not available or appropriate or if such materials contain more Embodied Carbon than the alternatives below;*

*ii. materials, products or components which been produced in a way which minimises Embodied Carbon and which are recyclable or reusable and if not available or appropriate or if such materials contain more Embodied Carbon than the alternatives below;*

*iii. materials or products which have been recycled and where relevant re-processed into the same or different products or materials and if not available or appropriate or if such materials contain more Embodied Carbon than the alternatives below; and*

*iv. materials, products or components which can be recycled.*

*Provided that if the nature and scale of the proposed works or the project of which they form a part mean that it is disproportionate to assess the Embodied Carbon of the alternative materials the words "or if such materials contain more Embodied Carbon than the alternatives below" are deemed to be deleted;*

*b) ensure that any fixtures, fittings, plant and machinery installed (whether by way of replacement or not) are resource efficient and in the case of replacement is at least as resource efficient as or more resource efficient than the replaced item;*

*c) comply with the provisions of this Lease at clause [Recycling of Waste from landlord or tenant works] relating to Waste; and*

*d) carry out the works using methods of working which minimise the use of energy and water and the production of Greenhouse Gas Emissions.*

**Drafting Note:**

This clause is drafted to cover both landlord's and tenant's works and could be inserted into the Sustainability schedule (Schedule 7) of the MCL. If only one party is to be bound by these provisions or the material cost caveat would only apply to works done by one party then it may be appropriate to include the clause as a separate Landlord or Tenant covenant for the relevant party only.

In many cases landlords will have their own fit out or tenant alterations guidelines which tenants are obliged to comply with. These may overlap with some or all of the requirements in this clause. This should be checked to avoid the creation of overlapping or inconsistent requirements.

Where landlord's works are covered by this clause, consideration should be given to the Service Charge provisions to ensure there is no inconsistency between this clause and those provisions.

The difference between the light green and medium green version of this clause is that the obligations in paragraph (a) in the light green version only apply to the extent they would not result in a material increase in cost.

Where the relevant works are minor the cost of assessing the Greenhouse Gas Emissions impact of the alternative material types may be disproportionate and parties may wish to consider agreeing criteria to govern which works or the scale of works this clause would apply to.

## 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 or limiting their remedies in relation to green clauses.

Clause 9 of the MCL provides that the lease is subject to the jurisdiction of the laws of England and Wales. It acknowledges that the exclusive jurisdiction of the courts of England and Wales is subject to any express agreement that a dispute should be settled by an expert or by arbitration.

## Standards

***Preamble***

The Environmental Rating(s) that are referenced in the definition should be limited to those that have actually been obtained, or which the Landlord is under a contractual obligation to obtain, in respect of the building. The sweeper provision in the definition of Environmental Ratings should be retained to allow the Landlord to pursue future Environmental Ratings in respect of the Building during the Term.

Owing to the potential for Environmental Ratings to be rebased over time the definition of Environmental Rating(s) includes drafting to allow for the Environmental Rating to be rebased during the Term.

A useful summary of available ratings is contained in Which Green Building Certification For Your Property? Workman

***Suggested drafting***

***Restriction on User***

*[The Tenant must not] use the Premises in a way that adversely affects the Environmental Rating(s) of the Premises [or the Building]*

***NABERS UK Rating***

*If the Premises [or the Building] at any time have a NABERS UK rating then in respect of the Landlord's obligation under [●] (to provide heating [air conditioning] and ventilation) and [●] (to provide hot water), any request by the Tenant to the Landlord to provide heating [air conditioning] and ventilation or hot and cold water outside of normal business hours will be agreed in advance and documented (in order that the Landlord can reflect changes to the schedule in their calculations for NABERS UK rating purposes).*

**Drafting note**

The restriction on use should be added to clause 4.14.3 of the MCL as an additional clause (g).

The NABERS UK clause should be added to the Agreements (clause 6) of the MCL or the Sustainability schedule (Schedule 7) of the MCL if that is adopted. This clause can be included even if the Building doesn't currently have a NABERS UK rating at the outset to cover the position where a NABERS UK rating could be obtained in the future.

## Renewable Energy

**Preamble**

This clause enables landlords and tenants to introduce renewable electricity or low carbon technology where appropriate. The light and medium green versions of this clause relate to the use of renewable electricity, whereas the dark green version also encourages additionality whereby the parties can facilitate the addition of new renewable energy generation to the grid (for example the generation of new renewable energy on site or facilitating new generation off site e.g. through a PPA through a new wind farm).

The clause only relates to electricity, however other forms of energy may be relevant depending on the existing energy systems and what is practically possible for the Building. If relevant, further bespoke provisions may be required to accurately reflect the existing heating and cooling systems in the Building or allow for the use of any fossil fuel back-up generators in an emergency.

Landlords and tenants may wish to consider participating in, or initiating, local or communal energy schemes such as low and zero carbon heat (and cooling) networks where practicable. Such installations will often be location, technology or building specific and may have detailed commercial arrangements set out in separate customer agreements. Appropriate lease drafting should be considered on a case by case basis. As a minimum, the parties should set out the right or obligation to connect into the network, access and maintenance arrangements for the energy equipment, the ability for occupiers to use other forms of heat and an appropriate mechanism to bind successors in title.

***Light green version***

*Unless there is no Green Tariff available at commercially reasonable rates, the Tenant must only enter into electricity supply agreements for the Premises using a Green Tariff.*

*Unless there is no Green Tariff available at commercially reasonable rates, the Landlord must only enter into electricity supply agreements for the [Common Parts] [Building][Premises] using a Green Tariff.*

**Drafting Note:**

The extent of the parties' obligations under this clause will depend on the extent of their respective obligations to procure electricity and the clause should be amended to reflect this. The clause should be added to the Sustainability schedule (Schedule 7) of the MCL. The parties will be able to establish the identity of the electricity supplier because of the data sharing provisions.

Where the Landlord procures electricity for the Premises there may be complications for it in agreeing such a provision where the Building is multi-let or the unit is in a shopping centre and a supply arrangement is already in place.

The requirement for supplies using a Green Tariff gives the parties the choice of using lower or higher quality green tariffs. Lower quality Green Tariffs do not guarantee that any of the energy purchased is 100% Renewable Energy as suppliers of fossil fuel derived electricity can purchase unbundled Renewable Energy Guarantees of Origin (REGOs) rather than buy or produce 100% Renewable Energy.

Further information on the procurement of renewable energy and high quality Green Tariffs can be found in the Renewable Energy Procurement Part 2 | UKGBC published by the UK Green Building Council.

***Medium green version***

*The Tenant must only enter into electricity supply agreements for the Premises with a Green Supplier.*

*The Tenant must provide the Landlord on reasonable request with appropriate documentation to evidence the sources of energy used to generate electricity for the Premises.*

*The Landlord must only enter into electricity supply agreements for the [Common Parts] [Building] [Premises] with a Green Supplier.*

*The Landlord must provide the Tenant on reasonable request with appropriate documentation to evidence the sources of energy used to generate electricity for the [Common Parts] [Building] [and the Premises].*

**Drafting Note:**

This version of the clause differs from the light green version because it applies irrespective of cost and requires supply from a Green Supplier who would supply under a high quality Green Tariff.

The extent of the parties' obligations under this clause will depend on the extent of their respective obligation to procure electricity and the clause should be amended to reflect this. The clause should be added the Sustainability schedule (Schedule 7) of the MCL. The parties will be able to establish the identity of electricity supplier because of the data sharing provisions.

Where the Landlord procures electricity for the Premises there may be complications for it in agreeing such a provision where the Building is multi-let or the unit is in a shopping centre and a supply arrangement is already in place.

Consider whether you wish to add nuclear and regenerative biomass (e.g. wood, municipal waste, biomass and landfill gas, ethanol and biodiesel) to the definition of 100% Renewable Energy. However, they are usually excluded from renewable energy sources because energy generated by incineration emits significant quantities of greenhouse gases and other forms of small particulate air pollution.

The parties could use bundled REGOs as the appropriate documentation to evidence the sources of energy for a renewable energy tariff. REGOs are currently issued by the energy regulator to certify that electricity has come from a renewable source. Further information on the procurement of renewable energy and high quality Green Tariffs can be found in the *Renewable Energy Procurement & Carbon Offsetting Guidance for Net Zero Carbon Buildings* published by the UK Green Building Council.

***Dark green version***

***Landlord's obligations***

1. *The Landlord must:*

    1.1. *procure that all of the electricity supplied to the [Premises] [Common Parts] [Building] during the Term (except in the case of a backup generator used only in case of emergency) is 100% Renewable Energy using one or more of the procurement options in clauses [2.1] to [2.3]; and*

    1.2. *only enter into electricity supply agreements for the [Premises] [Common Parts] [Building] with a Green Supplier.*

2. *The Landlord must procure the electricity supplied to the [Premises] [Common Parts] [Building] in clause 1.1 through one or more of the following procurement options:*

    2.1. *the installation of equipment capable of generating or storing or both 100% Renewable Energy on the Premises or in or on the Building or other adjoining land owned or occupied by the Landlord;*

    2.2. *if complying with clause 2.1 for the whole or part of the relevant electricity supply is impractical or cost-prohibitive, entering into a PPA with a Renewable Energy Project Developer to purchase 100% Renewable Energy to the extent that the 100% Renewable Energy is not supplied pursuant to clause 2.1; or*

2.3. *if complying with clauses 2.1 and 2.2 for the whole of the relevant electricity supply is impractical or cost-prohibitive, paying a Green Supplier a tariff for 100% Renewable Energy to the extent that the 100% Renewable Energy is not supplied pursuant to clause 2.1 and 2.2.*

3. *The Landlord must provide the Tenant on reasonable request with appropriate documentation to evidence the sources of energy used to generate electricity for the [Common Parts] [Building] [and the Premises].*

***Tenant's obligations***

4. *The Tenant must:*

4.1. *procure that all of the electricity supplied to the Premises during the Term is 100% Renewable Energy (except in the case of a backup generator used only in case of emergency) using one or more of the procurement options in clauses 5.1 to 5.3; and*

4.2. *only enter into electricity supply agreements for the Premises with a Green Supplier.*

5. *The Tenant must procure the electricity supplied to the Premises in clause 3.1 through one or more of the following procurement options:*

5.1. *the installation of equipment capable of generating or storing or both 100% Renewable Energy on the Premises or on adjoining land owned or occupied by the Tenant [subject to [Drafting note: insert relevant alterations clause reference in the Lease]];*

5.2. *if complying with clause 5.1 for the whole of the relevant electricity supply is impractical or cost-prohibitive or both entering into a PPA with a Renewable Energy Project Developer to purchase 100% Renewable Energy to the extent that the 100% Renewable Energy is not supplied pursuant to clause 5.1; or*

5.3. *if complying with clauses 5.1 and 5.2 for the whole of the relevant electricity supply is impractical or cost-prohibitive or both, paying a Green Supplier a tariff for 100% Renewable Energy to the extent that the 100% Renewable Energy is not supplied pursuant to clause 5.1 and 5.2.*

6. *The Tenant must provide the Landlord on reasonable request with appropriate documentation to evidence the sources of energy used to generate electricity for the Premises.*

**Drafting note:**

This clause provides options aimed at prioritising on-site renewables and encouraging off-site additionality, which the Landlord or the Tenant or both of them can adopt, depending on practicality and cost. The parties should consider whether each version of this clause is appropriate at the outset of the lease negotiation, having regard to the physical constraints of the Building, the length of the Lease, the nature and extent of each party's respective property interests and rights and who is responsible for procurement of electricity for relevant areas. The parties should also consider whether rights each party benefits from or reservations in favour of the Landlord should be amended to remove any obstacle to the installation of on-site generation equipment. This may be particularly relevant for access to and rights over the roof and airspace.

Power purchase agreements (PPAs) between electricity consumers and renewable energy generators allow for a more robust link between renewable energy generation and consumption and create additionality. However, given that these are bespoke sophisticated legal documents, the parties should seek appropriate advice before entering into them.

For guidance on developing a renewable energy strategy (including further information on REGO backed supplier tariffs and PPAs), refer to *Guidance Note 4.11: Procuring renewable energy* in the *Responsible Property Management Toolkit* published by Better Buildings Partnership.

Any tenant works carried out pursuant to this clause should be made subject to the relevant alteration provisions in the Lease.

## Rent review – open market

**Preamble**

The BBP recognises that the starting point of any rent review should be reality and that provisions which amend the form of the hypothetical lease on rent review to include (or exclude) green lease drafting which is not in the actual lease should be avoided. Departing from reality and amending the standard assumptions and disregards may have unforeseen consequences and detailed input from the parties and a rent review surveyor is required.

The BBP considers an assumption that the Premises "may lawfully be let" (meaning that the rent cannot be discounted if the Premises are substandard within the context of MEES) to be the industry standard and so uncontroversial.

Where the lease gives either the Landlord or the Tenant the right or obligation to carry out works aimed at improving Environmental Performance, questions arise as to the treatment of such works on rent review. If the parties do not have a right to do the work (or the right is qualified by the need for consent) how the works will be treated on rent review may be an important factor in whether or not consent is given and any agreement documenting the consent may need to include amendments to the existing rent review provisions. These discussions should include who will pay for the works. Where the cost can be recovered from the Tenant either directly or via a service charge the Tenant should not be required to pay twice, once for the works and once via any uplift in the rent because the Premises have been improved.

The BBP recognises that the rent review treatment of improvements to the Environmental Performance will be a matter for discussion between the parties but considers that the following principles represent a fair position for both parties:

a) Any works voluntarily carried out by the Tenant at its own expense, provided they are carried out in compliance with the lease, should be disregarded. This would normally be the position in modern rent review clauses in any case and is the position in the MCL;

b) Where the Landlord carries out works it has a right to carry out 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. Nothing in the MCL contradicts this position;

c) Any increase in the open market rent because of works carried out by the Tenant pursuant to an obligation to the Landlord in the lease, should be rentalised which is the usual position for such works and the MCL is consistent with this.

d) Any works carried out by the Tenant which adversely affect the Environmental Performance and reduce the open market rental value of the Premises should be disregarded on rent review, so that the Tenant cannot use the works to argue for a lower rent. This would normally be the position in modern rent review clauses in any case and is the position in the MCL.

Where the parties are happy with this position then no amendment is required to the Rent Review Schedule of the MCL. If agreement is not reached on these principles the BBP would still recommend the inclusion of the draft clauses "Extending the Landlord's right to do works" and "Extending the Tenant's ability to do alterations" as it recognises that there may be scenarios where the Landlord's desire to ensure that works are done to Improve the Environmental Performance of the Premises means that it is willing to depart from the position set out in b) and c). In that event the drafting which follows seeks to address how that could be done.

**Where the Landlord has an absolute right to carry out works which Improve the Environmental Performance of the Premises (at its own cost) and these works increase the rental value of the Premises but b) above is not agreed and so the works are disregarded on rent review.**

***Suggested drafting***

*[disregard….]any increase in rent attributable to works that have been carried out by or at the cost of the Landlord (or the Landlord's predecessors in title) during the Term which Improve the Environmental Performance of the Premises*

**Drafting note**

This is an additional disregard to be added into Schedule 2 of the MCL.

**Where the Tenant carries out work, at its own expense, which improves the Environmental Performance of the Premises and so increases the rental value of the Premises but pursuant to an obligation to the Landlord to carry out environmental improvement works but c) above is not agreed so that the works are disregarded on rent review.**

***Suggested Drafting***

*[Disregard …. any increase in rent attributed to any improvement….] not carried out pursuant to an obligation to the Landlord or the Landlord's predecessors in title (but any obligations relating to the method or timing of works in this Lease or any other document giving consent or any obligation to carry out work or take measures to enhance the Environmental Performance of the Premises will not be treated as an obligation for these purposes)*

**Drafting note**

This is amendment should replace disregard (d)(iii) in Schedule 2 of the MCL.

## Rent Review – Index Linked provisions.

Where the rent review is index linked (e.g., increased by reference to RPI or CPI) then the mechanism of the review will not change but the Index could be manipulated to encourage green behaviour. The parties could consider "rewarding" the Tenant for hitting specific green KPIs, for example by the index being discounted by 2% so if the targets are not met the increase is CPI +1% but if they are it is CPI – 1%.

Equally, an index linked rent review could be used as a way for the Landlord to recover the cost of specific works which are agreed at the outset, and which are designed to Improve the Environmental Performance of the Property. This may be a way for the parties to share the cost of the works where the projected energy saving of the agreed works can be agreed at the outset and then mathematically an increase in the uplift in the rent agreed to reflect the anticipated saving.

## Service charge

### Preamble

The BBP would encourage parties to act reasonably to agree the proportions of the Landlord and Tenant contributions to capital expenditure to Improve the Environmental Performance of the Building. However, parties may also consider including a fixed contribution within the lease at head of terms stage or drafting a payback calculation, whereby the Tenant will contribute if the changes result in energy savings which pay back over [X] years. If the works will result in cost savings by way of reduced energy or other utility costs for the Tenant the BBP considers that it is reasonable for the Tenant to contribute to the costs of the works to the extent that it will enjoy cost savings. How this is achieved should be a matter for agreement between the parties.

Service charges are always very site specific and the services a landlord will provide and a tenant will pay for need to be carefully considered. For this reason there are no light medium and dark green variations of this clause. Which of the provisions are appropriate to include will depend on what has been agreed elsewhere in the lease and must be considered on a case by case basis.

The suggested drafting is based on a lease of part of a building so reference is to Building Services and to Common Parts. When using the MCL for a lease of a unit on an estate or part of a building on an estate, references to Building Services and Common Parts will need to be amended accordingly in line with MCL definitions. Both parties should have regard to the provisions of the RICS Professional Statement on Service Charges in Commercial Property (service-charges-in-commercial-property_1st-edition_january-2022.pdf (rics.org)) which at paragraph 4.10.3 advocates a “fair and reasonable approach to the apportionment of sustainability costs between owners and occupiers” and states at paragraph 4.10.4 that “improved sustainability and other environmental improvement measures are … factors in any cost-benefit analysis carried out to justify improvement costs above the costs of the normal costs of maintenance, repair or replacement (for example the installation of energy efficient plant)." In relation to the MEES Regulations it states at paragraph 4.10.5 "subject to the terms of the lease and the principles set out in this professional statement, any subsequent costs of improving energy efficiency might comprise a legitimate service charge item, as long as there is a proportionate cost benefit to tenants". The BRC’s Retailer/Landlord Net Zero Protocol advocates cooperation between landlords and tenants on improving energy efficiency and incentives for this including some investment by tenants in relevant works with recovery of this through lower service charges. This recognises the potential of collaboration between the parties on shared investment in and the shared benefit of Improving the Environmental Performance.

### Suggested drafting (all amendments are to Schedule 3 of the MCL)

In part 1 paragraph 6 (Service Charge Disputes) add

*The Tenant is not entitled to challenge any element of the Service Costs which may have been procured at a lesser expense where the increase in costs is as a result of the Landlord procuring Services which promote the Environmental Performance of the Building [provided that the Landlord must ensure such costs are no greater than 10% more than they otherwise would have been].*

### Drafting note

Where the parties have agreed that the Landlord is under an obligation to provide services in a certain way (e.g. relating to sustainable use, the procurement of green energy, Waste policies and complying with the circular economy principles) so as to Improve the Environmental Performance of the Building then the 10% cap may not be appropriate because the cost of compliance should be recoverable in whole.

part 2 (Landlord's obligations) amend paragraph 1.1 (if using option 1 in the MCL) or 1.2 (if using option 2 in the MCL) as follows

*The Landlord acting reasonably and in the interests of good and environmentally responsible estate management:*

Add as new sub paragraphs to part 2 paragraph 2.1

*[The Landlord] is entitled to have regard to the Environmental Performance of the Building. [The Tenant acknowledges that, as a consequence, the Service Costs may be higher than if the Landlord procured the Building Services without due regard to promoting Environmental Performance. The Landlord must ensure that any difference in costs is economically proportionate].*

*[The Landlord] must take reasonable steps to minimise the number of deliveries to the Building.*

In part 3 (Building Services) or part 4 (Additional Services) include the following

*Carrying out any works and providing and maintaining all facilities and doing all other things required by this Lease relating to the Environmental Performance of the Building;*

In part 3 (Building Services) or part 4 (Additional Services) include the following where there are not clear lease obligations covering such issues.

*Storing, compacting recycling and disposing of Waste [including the provision of appropriate Waste segregation system];*

*Installing any of the following meters, sub-meters, check meters and Automatic Meter Reading devices or other equipment to measure the supply of gas, electricity, water or other energy or utility supplied to the Common Parts and Lettable Units within the Building;* (**Drafting note**- consider whether this provision needs to be amended to reflect the provisions of any data sharing or metering clause also in the Lease.)

*The installation and maintenance of technology to monitor and control the Environmental Performance of the Building;*

*Taking such steps as the Landlord considers appropriate to reduce water wastage (including installing plant and equipment for the purposes of recycling water (including Greywater) and capturing and using rainwater);*

*Paying all existing and future taxes, duties, charges, levies, assessments or financial impositions charged to the Landlord in respect of the carbon emissions or any other environmental impact related to the Premises and the Building;*

*Obtaining professional advice which is designed to Improve the Environmental Performance of the Building;*
Drafting note – part 4 paragraph 5 (Additional Services) already covers the costs of employing agents and contractors and this may be considered sufficient.

**Drafting note**

Consider amending part 4 (Additional Services) paragraph 15 so that auditing the Environmental Performance of the Building is extended to include collecting and analysing the data. Whilst this makes things clear the same amendment will need to be made to paragraphs 13 and 14 to avoid an assumption that in these cases auditing does not include collecting and analysing the data. Also consider whether the clause should be extended to cover Social Impact data.

Note also that part 4 (Additional Services) paragraph 15 of the MCL includes implementing the recommendations of any environmental management plan the Landlord has for the Building or any estate where reasonable and cost effective to do so.

**Appendix 1 - The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 as amended ("the MEES Regulations")**

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 as amended ("the MEES Regulations") which came into force on 1 April 2016 prohibit new lettings of most residential and commercial property if it is "sub-standard" (which is currently defined in the Regulations as having a valid EPC with a rating below band E) unless all relevant energy efficiency improvements have been made to the property or there are no improvements which can be made or unless one of the exemptions in Chapter 4 of the Regulations applies and has been registered on the PRS Exemptions Register. In the case of residential property, only certain types of letting are caught by the MEES Regulations which will include assured and assured shorthold tenancies. In the case of commercial properties all lettings will be caught except leases for a term certain of more than 99 years and lettings not exceeding 6 months unless they contain provisions for renewal or the Tenant has been in occupation for a continuous period exceeding 12 months.

With effect from 1 April 2020 continuing lettings of residential property were subject to the same prohibition and with effect from 1 April 2023 continuing lettings of commercial property were subject to the same prohibition. This prohibition will apply to continuing lettings of commercial properties where a valid EPC exists on 1 April 2023 or if none exists then, when a valid EPC next exists.

Following consultations on increasing the MEES trajectory for both residential and commercial property between 2019 and 2021 the UK Government has confirmed in various policy statements that:

it proposes to increase the minimum energy efficiency of property which is let and which is within the scope of the MEES Regulations as follows:

- For residential property the required minimum energy efficiency for all in scope new and continuing lettings will be an EPC rating of band E;
- for commercial property by requiring all new or continuing lettings to have a minimum EPC rating of band B. It was initially proposed this would apply from April 2030. It is unclear whether the proposed interim uplift to a minimum requirement for an EPC rating of band C in 2027 will apply at all. In October 2023 the government indicated any time line for any uplift would be pushed back to allow a sufficient lead in time.

The consultations also proposed clarifying the current uncertainty about whether lease renewals and listed buildings or buildings in a conservation area need to comply with the minimum energy efficiency standards and proposed in both cases to make it clear that they did.

One of the available exemptions in the MEES Regulations is the "consent exemption". This applies where a landlord has within the preceding 5 years been unable to increase the EPC rating to the minimum level required because a tenant has refused to consent to relevant energy efficiency improvements being made or where despite reasonable efforts being made by the landlord a third party consent it requires (e.g. planning consent, lender consent, superior landlord consent or the tenant's or other tenants' consent) has been refused or granted subject to a condition with which the Landlord cannot reasonably comply. This exemption will only apply to the extent of the works for which consent is required and cannot be obtained. Other relevant improvement works would still be required.

Where landlords seek to extend their right to do works to Improve the Environmental Performance of a Building or the Premises they should be aware that where the lease includes a landlord's right to do the necessary works this will remove the availability of the consent exemption where the right is absolute and may affect the exemption in other cases. Advice should be sort if needed in the particular circumstances of a

lease. However even if no such right is included in a lease a landlord will still need to make reasonable attempts to obtain a tenant's consent. In that event if the tenant grants such consent the exemption would not be available.