

HEADS OF TERMS FOR GREEN LEASE CLAUSES

To underline the importance of green lease clauses, to ensure parties and their advisers address their minds to these at an early stage and to speed up legal drafting and minimise the risk of green lease clauses being struck out by solicitors, it is recommended that reference is made to them in the heads of terms.

It is not appropriate for heads of terms to contain legal drafting. Options for including green lease terms in heads of terms are

set out below. Which will be most appropriate will depend on the circumstances of the negotiation, how much detail parties want to cover at the heads of terms stage and whether the Landlord has template green lease provisions available and wants to provide those at the heads of terms stage. Options 2 and 3 below are drafted for a lease of part of a building and should be amended for a lease of the whole of a building. Where clear plans already exist to improve the Environmental Performance of the Premises or the Building or where a tenant has specific environmental performance requirements the parties may be able to agree more bespoke and possibly more ambitious terms based on those plans or requirements.

OPTION

1

After setting out the essential commercial terms add a provision that the terms of the lease will contain the landlord's standard green lease clauses and provide a copy of these with the heads of terms.

OPTION

2

The parties are committed to ensuring the Premises and the Building are managed and used sustainably and with regard to the Environmental Performance (which will include energy and water consumption, waste, greenhouse gas emissions, [biodiversity, resilience] and other adverse environmental impacts) of the Premises and the Building and the lease will contain provisions which cover the following areas:

- cooperation on and a forum for discussion about the Environmental Performance [and social impact] of the Building and the Premises;
- the sharing of relevant data;
- the sustainable use of the Premises and the Building;
- the prevention of works by either party which would have an adverse impact on the Environmental Performance of the Premises and the Building and the protection of environmental ratings;
- some rights for the Landlord to carry out works to improve the Environmental Performance of the Premises and the Building;
- minimising waste to landfill and maximising the recycling of waste;
- the use of circular economy principles when carrying out works;
- the promotion of the procurement of renewable energy;
- Environmental Performance being taken into account in service charge provisions to some extent.

Use the BBP's Statements of Intent as the basis of a summary of the clauses the parties will include in the lease. Suggested drafting based on these, but providing more detail in some places based on the draft clauses, is set out below. Where the parties are clear at heads of terms stage which level of green lease drafting they will adopt for specific clauses (i.e. light, medium or dark green) these can be amended to reflect that.

The parties are committed to ensuring the Premises [and/or Building] are managed and used sustainably and with regard to the Environmental Performance (which will include energy and water consumption, waste, greenhouse gas emissions, [biodiversity, resilience] and other adverse environmental impacts) of the Premises [and/or Building] and the lease will contain provisions which achieve the following:

PART 1

Cooperation: provision for cooperation which sets out the shared aim of the parties to improve the Environmental Performance [and Social Impact] of the Premises and the Building and their agreement to cooperate to achieve this

Sustainability Group: provision for the parties to communicate on adequacy of data sharing relating to the Environmental Performance, travel plans [and Social Impact] and to discuss environmental sustainability [and Social Impact] issues [and to seek agreement on strategies for reduction targets] [and for the Landlord to set up a forum for discussion which the Tenant shall attend]

Sustainable Use: provision that the Landlord and the Tenant will not use more energy and water than reasonable for their actual use of the Premises and the Building, will use reasonable endeavours to ensure the efficient use of energy and water and will properly operate equipment/facilities to maintain the Environmental Performance of the Premises and the Building

Data Sharing and Metering: provision which a) ensures the Landlord and the Tenant regularly and transparently share data regarding at least the use of energy, water and waste of the Premises and the Building (including common parts) and where agreed other Environmental Performance [and Social Impact] data (with confidentiality obligations in respect of the data) and with Tenant consent to its suppliers providing energy and water data to the Landlord and b) ensures that a metering equipment can be installed in the Premises to capture energy and water usage [and c) ensuring that where smart building technology is installed the parties will not do anything which adversely affects that]

Landlord's right to do works: provision to avoid paralysis of the Environmental Performance/EPC rating of the Premises and the Building during leases (which may affect the tenant consent MEES Exemption) as follows:

- The Landlord to have a right to carry out works to improve the Environmental Performance of the Premises [with Tenant consent] if this is possible without material adverse impact on the Tenant's occupation;
- [set out any agreement in respect of a cost contribution from the Tenant to the extent of resulting savings;]
- The Landlord will not be liable for interruption to services caused by works to common parts/equipment which improve the Environmental Performance/EPC rating but will use reasonable endeavours to minimise any disruption/interference

Tenant's Alterations: provision restricting Tenant alterations which adversely affect the Environmental Performance, EPC rating or other environmental rating of the Building or the Premises and provision giving the Tenant the right to do alterations which improve the Environmental Performance, EPC or other environmental rating, with Landlord's consent not to be unreasonably withheld

EPCs: provision governing when, and the process by which, an EPC is obtained by a Tenant, giving the Landlord control over this so as to ensure consistent and high quality EPCs are commissioned

Waste: provision requiring the Landlord and Tenant to minimise the amount of waste that is sent to landfill and maximise the amount that is recycled [and to share waste data] [with provision for a landlord's waste policy and/or a recycling target]

Reinstatement: provision requiring the Landlord to serve notice if it does not require alterations to be reinstated and have due regard to any adverse impact on Environmental Performance (disregarding waste) in requiring reinstatement. Where reinstatement is required the Tenant will, minimise the amount of waste that is sent to landfill and maximise the amount that is recycled [and share the waste data] [with provision for a landlord's waste policy and/or a recycling target and/or agreement on and compliance with a recycling plan]

Renewable Energy: provision which promotes the procurement of renewable electricity via a [green tariff] [from 100% renewable suppliers] for the Premises and the Building [where available at commercially reasonable rates] [with obligations to source this via on-site generation or a power purchase agreement where feasible and not cost prohibitive]

Social Impact: provision that the parties will respond to any surveys related to Social Impact and that both parties will comply with applicable anti-slavery and trafficking laws and procure as far as possible that their contractors and agents do so

PART 2

Landlord's right to do works: provision to avoid paralysis of the Environmental Performance/EPC rating of the Premises and the Building during leases (which may affect the tenant consent MEES Exemption) as follows:

- The Landlord to have a right to carry out works to improve the Environmental Performance of the Premises [with Tenant consent] if this is possible without material adverse impact on the Tenant's occupation;
 - [set out any agreement in respect of a cost contribution from the Tenant to the extent of resulting savings;]
 - The Landlord will not be liable for interruption to services caused by works to common parts/equipment which improve the Environmental Performance/EPC rating but will use reasonable endeavours to minimise any disruption/interference
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Social Impact: provision that the parties will respond to any surveys related to Social Impact and that both parties will comply with applicable anti-slavery and trafficking laws and procure as far as possible that their contractors and agents do so

Restrictions on Landlord's adverse works: provision to prevent the Landlord carrying out works to the Building which would adversely affect its Environmental Performance, EPC rating or other environmental rating

Circular Economy: provision for both parties to apply circular economy principles to work by either of them to the Premises or the Building via use of a hierarchy of sustainable materials

Standards: provision that the Tenant shall not use the Premises in a way that adversely affects any environmental rating for the Premises [or the Building]

Service Charges: provision that:

- In providing Services the Landlord should act in an environmentally responsible way and is entitled to have regard to the Environmental Performance of the Building
 - Where additional costs are incurred for Services carried out having regard to the Environmental Performance, the Tenant will not challenge the additional costs [provided that the costs are no more than 10% higher than they otherwise would have been]
 - Services to include:
 - Dealing with waste
 - Installing meters
 - Installing tech to monitor and control Environmental Performance
 - Steps to reduce water use and capture rainwater
 - Taxes on carbon emissions and other environmental impact of the Premises or the Building
 - Landlord's obligations under any green lease provisions save where provided otherwise
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