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# Cooperation and Works

## 1 Environmental Initiatives

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| **PRESENCE TEST** | | **FURTHER INSTRUCTION** | |  |
| Do the parties acknowledge a commitment to environmental sustainability and include at least one form of initiative in the lease that is intended to achieve such a positive environmental outcome? | | This could be any type of initiative relating to environmental sustainability (such as recycling, green cleaning or land use ecology). The intent of this clause is to encourage the parties to, at a minimum, determine collaborative priorities with regards to environmental sustainability and commit to consideration of these during the term. This can result in a doubled scoring of a topic where the initiative is also a topic for consideration as part of the Leasing Standard. | |  |
| **OVERVIEW** | | **CONCERN/RISK** | | **MITIGATION** |
| These clauses may be used instead of or in addition to other clauses relating to Environmental Sustainability. | | Parties may be concerned that clauses relating to environmental sustainability will result insignificant costs and/or disruption to building operations. | | These clauses compel co-operation but are limited by what is practical and reasonable. If costs or operations will be adversely affected by activities under these clauses they may not be enforced. |
| **SAMPLE CLAUSES** |  | |  | |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| none noted | 1.1 Commitment  The Landlord and the Tenant are each committed to managing and operating the Building and the Premises to promote energy efficiency and minimise the environmental impact of the use and occupation of the Building. | none noted | none noted |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| These are positive, high-level commitments that can be placed in a lease document where more structured commitments may be problematic to agree. | 1.2 Co-operation   1. As part of their commitment in clause 1.1, the Landlord and the Tenant will cooperate with each other and act in good faith to:    1. positively contribute to the working environment of the occupants of the Building and the Premises;    2. promote the efficient use of resources in the management and operation of the Services, the Building and the Premises; and    3. improve and be accountable for energy efficiency in the Premises and the Building wherever possible. 2. In order to achieve the outcomes in clause 1.2(a), the Landlord and Tenant will, wherever practicable and reasonable, cooperate with each other’s initiatives to:    1. reduce energy consumption, water consumption and waste; and    2. increase and improve recycling, having regard to:    3. the extent of any works or operational change required to do so;    4. the cost of such works or operational change; and    5. the extent of interference to occupiers of the Building arising from any such works or operational change. | Tenants may be concerned that the wording “must not do anything” is broad and will impose unforeseen obligations or costs on the tenant. | Listing specific activities that constitute interference may be more acceptable to a tenant then a blanket statement. |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| none noted | 1.3 Action  Without limiting the general commitments in clause 1.1 and clause 1.2, the Landlord and Tenant will:   1. [not / use reasonable endeavours not to] do anything which decreases or adversely affects the energy efficiency and environmental performance of the Building or the Premises; 2. co-operate in all audits conducted or initiated by the other party or independent auditors and allow reasonable access to the Premises and Building to enable the gathering of information relating to the energy efficiency and environmental performance of the Building or the Premises, such information to be maintained as confidential unless the other party consents to its disclosure or disclosure is required by Law; 3. if the Building has a Sustainability Management Committee in place, nominate a representative to participate in the Sustainability Management Committee; 4. if the Building or Premises has a Sustainability Management Plan in place [comply with / use reasonable endeavours to comply with] the Sustainability Management Plan; 5. use reasonable endeavours to incorporate energy and water use performance criteria into fitout design and equipment selection wherever practicable; and 6. [require /use reasonable endeavours to ensure] that cleaners engaged to service the Building or Premises, as the case may be:    1. use materials which release the lowest levels of volatile or toxic chemicals;    2. comply with any recycling programs in place. | none noted | none noted |

## 2 Enabling Upgrade Works

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| **PRESENCE TEST** | | **FURTHER INSTRUCTION** | |  |
| Does the lease encourage, facilitate or require the parties to upgrade the building or premises to improve the efficiency or environmental performance of the building during the term? | | Clauses could relate to:   * cooperation between the parties to facilitate the carrying out of works designed to improve the efficiency or environmental sustainability of the building * the design of any works so as not to interfere with the building’s performance (such as for NABERS or Green Star) * works being built from recycled materials * the minimisation of waste from works * if a party caries out works to improve the efficiency or environmental sustainability of the building it will not constitute an interference with quiet enjoyment | |  |
| **OVERVIEW** | |  | |  |
| Outgoings clauses typically exclude the passing on of costs for capital upgrades to tenants. This clause enables a landlord to enter into an Environmental Upgrade Agreement (EUA) and pass costs on to tenants under the machanisims in the EUA if the capital upgrade outweighs the upfront cost. | |  | |  |
| **DEFINITIONS** |  | |  | |
| Environmental Upgrade Agreement means an agreement in accordance with the Local Government Amendment (Environmental Upgrade Agreements) Act 2010 (NSW). | |  | |  |

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| **SAMPLE CLAUSES** |  |  |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| none noted | 1.1 Environmental Upgrade Agreements   1. The Landlord may carry out capital upgrades on the Building which are subject to an Environmental Upgrade Agreement. 2. Any amounts recoverable from the Tenant by the Landlord for works carried out under an Environmental Upgrade Agreement must not exceed a reasonable estimate of the cost savings to be made by the Tenant as a consequence of the works.   [Drafting note - This clause may be drafted as part of an outgoings clause or as a standalone provision.] | Tenants may be reluctant to commit to paying for capital upgrade works which are not ordinarily a cost under commercial leases. | The Local Government Amendment (Environmental Upgrade Agreements) Act 2010 (NSW) provides that tenants are liable to pay for capital costs under an Environmental Upgrade Agreement if the benefit to the Tenant outweighs the cost within the term of the lease. |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| The clause could accompany a works clause that sets out the works that a landlord intends to carry out to improve the efficiency of the building. This clause deals with how the costs of those works are distributed between the landlord and the tenant | 1.2 Ability to Carry Out Capital Upgrade works   1. The Landlord may carry out capital upgrades to the Building designed to improve the efficiency or environmental sustainability of the building or premises (Capital Upgrades). 2. If the Landlord carries out Capital Upgrades: 3. the Landlord [#must not/must use its reasonable endeavours not to] interfere with the Tenant’s business and quiet enjoyment of the Premises when carrying out the Capital Upgrades; and 4. subject to the Landlord complying with clause 2.3(b)(i), the Tenant will not make any claim or demand any compensation for interference with the Tenant’s business and quiet enjoyment of the Premises as a result of the Capital Upgrades. 5. The Tenant may carry out capital upgrades to the Premises designed to improve the efficiency or environmental sustainability of the premises (Premises Upgrade) provided that it complies with the provisions of the Lease when doing so. The Landlord will not unreasonably withhold approval to a request by the Tenant to carry out a Premises Upgrade. 6. If the Landlord carries out Capital Upgrades, the Tenant will contribute towards the cost of the Capital Upgrade provided that the amount payable by the Tenant must not exceed a reasonable estimate of the cost savings to be made by the Tenant as a consequence of the Capital Upgrades. | none noted | none noted |

## 3 Sustainability Management Collaboration

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| **PRESENCE TEST** | **FURTHER INSTRUCTION** |  |
| Does one or both parties nominate a method or representative for collaborating about information related to sustainability? | The lease must require one or both parties to appoint a representative responsible for sharing information relating to sustainability via a:   * website * newsletter * meeting group * the use of a building management committee that discusses a number of topics during the term (eg. safety, compliance, or social committees) between the parties if it includes sustainability considerations. |  |
| **OVERVIEW** | CONCERN/RISK | mitigation |
| A Sustainability Management Committee is a committee established to ensure that stakeholders in a building meet to discuss building performance. The stakeholders can also use the forum to agree to a Sustainability Management Plan that seeks to improve the performance of the building.  The engagement of landlords, tenants and building managers in management committees that consider the environmental performance of buildings has been shown by the Warren Centre Low-Energy High-Rise Project to improve the NABERS ratings of buildings. This framework enables a dialogue for joint progress on topics of energy, water and waste consumption.  For more information on the Warren Centre and its projects go to: <http://www.thewarrencentre.org.au>. | Parties may be concerned that implementing a Sustainability Management Committee will be costly and administratively burdensome. | Costs and administration of Sustainability Management Committees will change depending on the method of committee management that the parties agree to.  The following are some examples of possible management methods:   * Sustainability Management Committee meetings which involve one on one meetings between the landlord and tenant. * Sustainability Management Committee meetings which involve meetings between the landlord and all tenants of the building. * Incorporation of the Sustainability Management Committee agenda items into the building management meetings that parties typically have each month or quarter. |

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| **DEFINITIONS** |  | |  | | |
| **Sustainability Management Committee** means the management committee established by [the Landlord /this Lease] which is comprised of representatives of:   * [the Landlord; and * the Tenant   OR   * the Landlord; * the Tenant; and * other tenants in the Building;] | | **Sustainability Management Plan** means the management plan entered into by the Sustainability Management Committee that includes information relating to the sustainability of the Building. | | **Green Star - Performance**  A Sustainability Management Committee may be used as an input into Green Star – Performance compliance requirements.  A Sustainability Management Plan that addresses operational issues may be used as an input into Green Star – Performance compliance requirements. | **Green Star - Interiors**  A high-level commitment to a Sustainability Management Plan may be used as an input into Green Star – Interiors compliance requirements. |
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| **SAMPLE CLAUSES** |  | |  | | |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| none noted | 1.1 Sustainability Management Committee  [Within [insert #] days of the Commencing Date the Landlord and the Tenant will establish the Sustainability Management Committee which will operate for the Term;  OR  The parties acknowledge that the Building has a Sustainability Management Committee. Within [insert #] days of the Commencing Date, each party will notify to the other the name and contact details of that party’s representative on the Sustainability Management Committee (which each party may update from time to time by written notice to the other party).  ] | none noted | none noted |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| none noted | 1.2 Role  The Parties acknowledge and agree that the Sustainability Management Committee’s role is one of discussion, consultation and recommendation on issues related to:   1. energy efficiency; 2. environmental impact; and 3. compliance with: 4. regulatory standards related to the design, construction, maintenance, management, use and occupation of the Premises and Building; and 5. the Operational Performance Standards.   [Drafting note - Option (ii) refers to the Operational Performance Standards clause. If this clause is not being implemented, option (ii) should be removed.] | none noted | none noted |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| none noted | 1.3 Meetings   1. The Sustainability Management Committee will meet [quarterly / six-monthly / other] or as otherwise agreed by the parties for the purposes of addressing any matters or issues which arise under this Lease. 2. The Sustainability Management Committee will produce and maintain for the Term written minutes of each meeting which will be approved and signed by the Sustainability Management Committee representatives within [insert #] days of each meeting. | none noted | none noted |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| none noted | 1.4 Information   1. The parties [will use reasonable endeavours to] provide information to the Sustainability Management Committee to assist it in fulfilling its role described in clause 1.2. 2. Information to be provided under clause 1.4(a) includes all plans, documents, maintenance contracts, specifications, maintenance reports and maintenance schedules (excluding information that is confidential to a party or cannot be disclosed by law), that the parties have regarding: 3. electricity and gas (which shows consumption data); 4. water consumption; 5. material use; 6. waste generation; and 7. waste management, including recycling, for the Building and the Premises. 8. The parties must keep all information provided under clause 1.4 secure and confidential except to the extent necessary:    1. to comply with a Law; or    2. to enable the Parties to perform their roles and obligations under the Lease;    3. as required for any dispute resolution process in this Lease; or    4. if permitted by the other party, for other purposes, including, corporate reporting or marketing. | none noted | none noted |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| none noted | 1.5 Sustainability Management Plan   1. The Sustainability Management Committee [must/will use its reasonable endeavours to] agree on and sign a Sustainability Management Plan which supports and sets out strategies for the Sustainability Management Committee in fulfilling its role described in clause 1.2 [no less than once per annum / within the earlier of: 2. [Insert #] months from the Commencing Date; and 3. [Insert #] months from the date of the previous Sustainability Management Plan]   [Drafting note - 3 months is standard, however another time frame may be chosen]   1. The Sustainability Management Committee will review the Sustainability Management Plan from time to time but not less than once every [Insert #] years and will refer any recommendations for amendment to the Landlord and the Tenant. | none noted | none noted |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| none noted | 1.6 Costs  The Landlord and the Tenant will bear their own costs in connection with the Sustainability Management Committee and the Sustainability Management Plan. | none noted | none noted |

## 4 Premises Design for Performance

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| **PRESENCE TEST** | | **FURTHER INSTRUCTION** | |  |
| Does the lease encourage, facilitate or require the reduction of the environmental impact of the fitout? | | Clauses could relate to:   * the design of the fitout so as to improve the efficiency or environmental sustainability of the building * fitout being built from recycled materials * design of fitout in a way that enables it to be reused at the end of the life of the lease * handing back of fitout to the landlord so it may be reused at the end of the life of the lease. | |  |
| **SAMPLE CLAUSES** |  | |  | |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| none noted | 1.1 Works   1. When the Tenant fits out the Premises or carries out any works to the Premises or the Landlord carries out any works to the Building, the party carrying out the works: 2. [must/must use reasonable endeavours to] minimise the environmental impact of its activities and engage in appropriate consultations in relation to those activities to assist it in doing so; 3. [must/must use reasonable endeavours to] source and use sustainable, environmentally friendly, reused, recycled or refurbished products and energy efficient materials; 4. [must/must use reasonable endeavours to] use materials and configure the fitout to minimise the reliance on air conditioning; 5. [must/must use reasonable endeavours to] minimise energy consumption and waste in carrying out the works; and 6. [must/must use reasonable endeavours to] consider, (acting reasonably) the recommendations and suggestions of the other party to comply with this clause taking into account their economic or practical feasibility. 7. The party carrying out the works must ensure any contractors it engages to carry out the works comply with the standards set out under clause 1.1(a) | none noted | Landlords may consider including this clause in their fitout guidelines rather than in the body of the lease. If they do so then they must make sure the lease contains a clause that requires the tenant to comply with the landlord’s fitout guidelines. |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| none noted | 1.2 Tenant’s fitout and alterations  The Tenant must ensure that any works to the premises, including fitout of the premises, do not interfere with the sub-metering configuration of the premises. | none noted | none noted |

## 5 Managing Waste from Works

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| **PRESENCE TEST** | | **FURTHER INSTRUCTION** | |  | |
| Does the lease encourage, facilitate or require the reduction of the environmental impact from works within the building or premises? | | Clauses could relate to:   * the landlord accepting a make good payment in lieu of reinstatement works to ensure that the premises is upgraded to the landlords or a new tenant’s specifications * allowing the landlord access to the premises to show tenants / consultants through, with a view to recycling the fitout. * the monitoring of waste from works * the minimisation of waste from works, enabling fitout to be reused, recycled, repurposed or redirected from landfill. | |  | |
| **OVERVIEW** | | CONCERN/RISK | |  | |
| Clauses around make good can result in the minimisation of financial and resource waste that often occurs at the end of the lease.  RICS has produced the Guide to Greening Make Good to assist the property industry in reducing waste at lease end through valuing the materials used and trying to avoid waste through planning, agreement and sharing responsibility. For more information on the RICS Guide go to: <http://www.rics.org/au/> | | The BBP Stripout Waste Guidelines  These guidelines set a new best practice standard to achieve a minimum resource recovery target of 60% during the office strip-out and refurbishment process. These guidelines and its associated workbook provide a framework to improve stripout operations, procurement processes, and ensure consistent measurement and reporting. They are aligned with Green Star Interiors and Performance rating tools, and could be utilised as part of the evidence used to earn credits. For more information on these guidelines go to:  <http://www.betterbuildingspartnership.com.au/stripout> | |  | |
| **DEFINITIONS** |  | |  | | |
| **Make Good** means [insert definition];  [Drafting note - the definition of make good will vary according to the Lease and commercial negotiations]  **Make Good Price** means the amount determined by clause 1.2(a) or clause 1.2(c) (as the case may be);  **Make Good Period** means the period during which the Make Good is to be carried out;  **Re-letting Period** means [insert date prior to the Expiry of the Lease]; Building;] | |  | | **Green Star - Performance**  Make Good information may be used as an input into Green Star – Performance compliance requirements | **Green Star - Interiors**  Minimising waste from make good is a recognised element in Green Star – Interiors. |
| **SAMPLE CLAUSES** |  | |  | | |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| none noted | 1.1 Commitment  The Landlord and the Tenant commit to using reasonable endeavours to minimise waste from the fitout of the Premises. | none noted | none noted |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| none noted | 1.2 No reinstatement  The Tenant must not be required to reinstate any fitout or alterations which have been carried out with the consent of the Landlord during the Term and which improve the energy or water efficiency of the Premises unless such reinstatement is reasonably required by the Landlord to improve its ability to re-let the Premises after the Expiry of the Lease. | The Tenant may incur costs if the landlord requires it to reinstate the Premises to its original state prior to the lease. | This clause creates the potential for tenants to save on fitout costs. Many standard make-good clauses do not provide such an option and mandate that tenants must re-instate their premises, regardless of any operational benefits to the landlord.  The clause still provides for a fall-back position of the landlord retaining the money paid by the tenant for the cost of the make good works if a new tenant cannot be found to take over the existing fitout. |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| The BBP Stripout Waste Guidelines recommend agreeing on the conditions and timeline of the make good settlement 6 to 9 months prior to lease end. | 1.3 Costing Make Good   1. At least [insert #] [weeks / months] prior to the Expiry of the Lease the parties must meet and co-operate in good faith to agree a fixed price to undertake and complete the Make Good works during the Make Good Period acceptable to the Landlord and Tenant. 2. The Make Good Price must itemise in as muc­h detail as is practicable the individual costs of each component of the Make Good. 3. If the parties do not reach agreement within [insert #] days of meeting, then [either party may refer the matter for resolution by an Expert appointed under the Lease / the Tenant will be required to reinstate the Premises in accordance with the Make Good clause under the Lease, having regard to clause 1.2]. 4. The Tenant must pay to the Landlord the Make Good Price to the Landlord within [insert #] days of the Landlord providing a tax invoice to the Tenant for the Make Good Price to be held by the Landlord on trust on behalf of both parties for distribution in accordance with clause 1.4. | none noted | none noted |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| none noted | 1.4 Re-use of fitout   1. During the Re-letting Period the Landlord must use its reasonable endeavours to secure a new tenant to lease the Premises with as much of the Tenant’s fitout remaining in the Premises as possible. 2. If the Landlord secures a new tenant for the Premises and that new tenant agrees to utilise the whole or part of the existing fitout in the Premises, the Landlord: 3. will refund to the tenant, within [insert #] days of entering into a binding agreement with the new tenant, an amount equal to the Make Good Price less the cost of Make Good of those items that the new Tenant does not require be removed from the Premises; and 4. the Landlord may retain the balance of the Make Good Price after deducting the amount referred to in clause 1.4 (i). 5. If the Landlord does not secure a new tenant for the Premises during the Re-letting Period, the Landlord may [retain the Make Good Price / refund to the Tenant the Make Good Price and require that the Tenant carries out the Make Good works in accordance with the Lease].   [Drafting note – delete (d) if the Landlord elects to have the Tenant carry out the Make Good Works]   1. At the end of the Re-letting Period the Tenant is released in full from its Make Good obligations under the Lease. | none noted | none noted |
|  |  | **ADDITIONAL BENEFITS** |  |
|  |  | **Green Star - Performance**  Make Good information may be used as an input into Green Star – Performance compliance requirements | **Green Star - Interiors**  Minimising waste from make good is a recognised element in Green Star – Interiors. |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| The BBP Stripout Waste Guidelines provides an excellent Waste Management Report Template, which outlines the process by which contractors and tenants can ensure all office stripout waste is transported and disposed of in accordance with the requirements of the building owner/tenants and environmental law. This Waste Management  Report template includes the necessary details to ensure all material is accounted for, whether its destination is landfill or recycling facilities. For more, go to: <http://www.betterbuildingspartnership.com.au/stripout> | 1.5 Reporting   1. The parties will use reasonable endeavours to deal with waste from works carried out in relation to the Building or the Premises in a sustainable way. [#The parties aim to divert 60% of that works waste from landfill.#] 2. A party carrying out work in relation to the Building or the Premises must use its reasonable endeavours to:    1. record the amount of waste that is dealt with in a sustainable way rather than being sent to landfill and the total amount of waste; and    2. provide that information to the other party. 3. The Landlord will use its reasonable endeavours to assist the Tenant to dispose of fitout waste and waste resulting from doing works in the Building or the Premises in a sustainable way. | none noted | none noted |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| The creation, maintenance and communication of an up-to-date materials inventory, shared in good faith with all parties, enables better outcomes; more accurate pricing and labour estimation by builders, designers and demo contractors; and creates a longer lead time for resource recovery across the entire process. For an excellent Resource Inventory template refer to section 3e of the BBP Stripout Waste Guidelines here: <http://www.betterbuildingspartnership.com.au/stripout> | 1.6 Resource Inventory   1. The parties will use their reasonable endeavours to agree on the make good works the Tenant is required to carry out at least 6 months and not more than 9 months before the expiry date of the Lease. 2. The Tenant will prepare an inventory of that part of the fitout of the Premises that the Tenant is required to remove and which could reasonably be reused elsewhere and provide it to [#insert name of BBP fitout advertising list#] at least 6 months prior to the expiry date of the Lease. 3. This clause does not lessen the obligations of the Tenant under the Lease, but is intended to give the opportunity for at least part of the fitout of the Premises to be reused. | none noted | none noted |

## 6 Social Initiatives

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| **PRESENCE TEST** | | **FURTHER INSTRUCTION** | |  |
| Does the lease encourage, facilitate or require initiatives that are designed to improve the wellbeing of the premises / building’s surrounding communities? | | Initiatives could relate to:   * provision of healthy food * commitments to matched corporate giving, such as The Big Issue’s H4H initiative * commitments to gender equity or diversity * commitments to safety or above-award pay for building management, cleaners, etc * responsible use of ground level and surrounding public space that results in enhancement/building of capacity of the surrounding community * use of empty space within the premises/building for social enterprises * initiatives that provide for the well-being of employees and occupants as a community, cross-training in industries or supporting strong families (eg. RUOK day, etc) * open days or community support initiatives * commitments for fitout waste to go to charities and local communities before recycling or landfill * commitments to use local or social enterprise labour | |  |
| **SAMPLE CLAUSES** |  | |  | |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| none noted | 1.1 Social Initiatives   1. The Landlord, as a contribution towards the good of the wider community, will [#insert description of social initiative#] (Social Initiative). 2. The Tenant will publicise the Social Initiative to its employees and encourage its employees to be involved in or contribute towards the Social Initiative where it is reasonably possible for the employees to do so. | none noted | none noted |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| none noted | 1.2 End of trip facilities for Social Sustainability   1. The Building contains showers as part of its end of trip facilities in the Common Areas. The Landlord and the Tenant wish to contribute towards the good of the wider community. 2. The Landlord, as a contribution towards the good of the wider community, allows people without a fixed address to use the showers in the Common Areas [#outside of Building Hours/on weekends/on weekends within a fixed time period#] under supervision. The Landlord will [#use its reasonable endeavours to#] ensure that: 3. [# the showers are cleaned before the commencement of Building Hours; and 4. Building tenants are notified of both which showers in the Common Areas will be used in this way and when they will be so used.#] | none noted | none noted |

# Management and Consumption

## 1 Energy Management

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| **PRESENCE TEST** | | | **FURTHER INSTRUCTION** | |  | | |
| Does the lease encourage, facilitate or require the parties to monitor and or manage their energy consumption? | | | Clauses could relate to:   * installation of metering equipment to measure energy consumption * programs to reduce the consumption of energy, including education of employees * sharing of energy consumption data between the parties * allowing a party to read the other’s energy meters * installation of energy efficient products, such as lighting * installation of decentralised energy production capabilities, energy efficient plant and equipment or renewable energy in the building or premises * purchase of renewable energy, including GreenPower. | |  | | |
| **OVERVIEW** | | |  | |  | | |
| Greenpower is a government accreditation program that enables organisations to purchase renewable energy. For more information on greenpower see <http://www.greenpower.gov.au> | | |  | |  | | |
| **DEFINITIONS** | | |  | |  | | |
| Greenpower means energy produced under a greenpower product accredited by the national greenpower accreditation program or its successor. | | |  | |  | | |
| **SAMPLE CLAUSES** | |  | |  | | | |
| **NOTES** | **CLAUSE** | | | | | **CONCERN/RISK** | **MITIGATION** | |
| none noted | 1.1 Minimisation of energy consumption  The Landlord and the Tenant commit to using reasonable endeavours to minimise the energy consumption of the Base Building and the Premises. | | | | | Parties should be aware that GreenPower can be used in NABERS, but cannot be purchased for the purpose of disclosure under the Building Energy Efficiency Disclosure Act 2010 (Cth). | none noted | |
| NOTES | CLAUSE | | | | | CONCERN/RISK | MITIGATION | |
| none noted | 1.2 Energy monitoring and reporting   1. The Landlord and the Tenant agree to regular monitoring of energy consumption and greenhouse gas emissions of the Base Building and the Premises. 2. The Landlord and Tenant will provide reports containing details of the energy consumption and greenhouse gas emissions of the Base Building or Premises to the other party each [month/quarter] | | | | | none noted | none noted | |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| none noted | 1.3 Reduction of carbon intensity  The parties [may/will] purchase or use [insert/a percentage, as agreed between the parties], of GreenPower, low carbon electricity or renewable electricity to reduce the carbon intensity of the Base Building or Premises. | none noted | none noted |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| none noted | 1.4 Energy Management  The parties will co-operate to develop and implement a programme in relation to the management of [#insert resources that are to be­ managed eg: electricity and water use#] to educate and encourage the Tenant’s employees to reduce consumption of [#water and electricity#]. Each party will nominate a representative for the development and implementation of this programme. | none noted | none noted |

## 2 Water Management

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| **PRESENCE TEST** | | **FURTHER INSTRUCTION** | | **ADDITIONAL BENEFITS** |
| Does the lease encourage, facilitate or require the parties to monitor and or manage their water consumption? | | Clauses could relate to:   * installation of metering equipment to measure water consumption * sharing of water consumption data between the parties * allowing a party to read the other’s water meters * installation of water efficient products, such taps * programs to reduce the consumption of water, including education of employees * recycling of water through treatment | | **Green Star - Performance**  Water monitoring may be  used as an input into  Green Star – Performance  compliance requirements. |
| **SAMPLE CLAUSES** |  | |  | |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| none noted | 1.1 Water consumption and reporting   1. The Landlord and the Tenant commit to using reasonable endeavours to minimise the water consumption of the Base Building and the Premises. 2. The Tenant commits to using reasonable endeavours to cooperate with any water management strategies in place for the Base Building. 3. The Landlord and the Tenant agree to regular monitoring of water consumption of the Base Building and the Premises. 4. The Landlord and Tenant will provide reports containing details of the water consumption of the Base Building and the Premises to the other party each [month/quarter]. | none noted | none noted |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| none noted | 1.2 Water Management  The parties will co-operate to develop and implement a programme in relation to the management of [#insert resources that are to be managed eg: electricity and water use#] to educate and encourage the Tenant’s employees to reduce consumption of [#water and electricity#]. Each party will nominate a representative for the development and implementation of this programme. | none noted | none noted |

## 3 Waste Management

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| **PRESENCE TEST** | **FURTHER INSTRUCTION** |  | |
| Does the lease encourage, facilitate or require the parties to monitor and or manage their waste? | Clauses could relate to the building, premises and/or works:   * implementation of waste management programs * participation in a waste management program * monitoring of waste * sharing of information relating to the generation of waste * sharing of information relating to the recycling of waste or diversion of waste from landfill * programs to reduce the generation of waste, including education of employees * programs to encourage the recycling of waste or diversion of waste from landfill * programs to encourage the segregation of waste. |  | |
| **OVERVIEW** |  | **ADDITIONAL BENEFITS** | |
| This is a simple clause that states the parties’ commitment to reducing waste.  CitySwitch Guide to Office Waste The CitySwitch Guide to Office Waste provides practical advice to office-based businesses that want to implement a best-practice approach to waste and recycling.  No matter the size of your workplace, or the industry you are in, there are measures you can take across your organisation to be more considerate of your waste – and in doing so, you can gain considerable advantages and efficiencies for your business. To download the Cityswitch Guide to Office Waste, visit Cityswitch’s waste resource page [***here***](http://www.cityswitch.net.au/Resources/CitySwitchResources/Planning%2Creportingandmonitoring/Planning%2Creportingandmonitoringarticle/TabId/150/ArtMID/787/ArticleID/10397/CitySwitch-Guide-to-Office-Waste.aspx).  BBP Operational Waste Guidelines The Better Buildings Partnership recognises the importance of waste as a material with importance and value to tenants and occupants due to its environmental and economic impacts. For more information, download the [BBP Operational waste Guidelines.](http://www.betterbuildingspartnership.com.au/resource/guidelines-for-operational-waste-procurement-management-and-reporting/) |  | **Green Star - Performance**  Waste monitoring may be used as an input into Green Star – Performance compliance requirements. | **Green Star - Interiors**  Operational waste management strategies can be used to demonstrate compliance with Green Star – Interiors requirements |

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| **SAMPLE CLAUSES** |  |  |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| none noted | 1.1 Waste minimisation and reporting   1. The Landlord and the Tenant commit to using reasonable endeavours to minimise the amount of waste going to landfill and maximise waste recycling from the operations of the Base Building and the Premises. 2. The Tenant commits to using reasonable endeavours to cooperate with any waste management strategies in place for the Base Building. 3. The Landlord and the Tenant agree to regular monitoring of waste from the Base Building and the Premises. 4. The Landlord and Tenant will provide reports containing details of the waste of the Base Building or Premises to the other party each [month/quarter]. | none noted | none noted |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| none noted | 1.2 Waste Management  The parties will co-operate to develop and implement a programme in relation to the management of [#insert resources that are to be managed eg: electricity and water use#] to educate and encourage the Tenant’s employees to reduce consumption of [#water and electricity#]. Each party will nominate a representative for the development and implementation of this programme. | none noted | none noted |

## 4 Indoor Environment Management

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| **PRESENCE TEST** | | **FURTHER INSTRUCTION** | |  | |
| Does the lease encourage, facilitate or require the parties to monitor and manage their indoor environment? | | Clauses could relate to:   * programs and systems to asses and eliminate hazardous materials * ensuring that where hazardous materials cannot be eliminated, risks are controlled and minimised * storage of hazardous materials. | |  | |
| **OVERVIEW** | |  | | **ADDITIONAL BENEFITS** | |
| Clean air in the workplace can provide significant health benefits for employees and improve employee efficiency and productivity. The World Green Building Council’s The Business Case for Green Building uses 15 independent studies to evidence up to 11% improvement from good indoor environment.1  [***http://www.worldgbc.org/activities/business-case/***](http://www.worldgbc.org/activities/business-case/%20) | |  | | **Green Star - Performance**  Air quality data may be used as an input into Green Star – Performance compliance requirements. |  |
| **SAMPLE CLAUSES** |  | |  | | |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| none noted | 1.1 Quality of indoor air   1. The Landlord and Tenant [will /will use reasonable endeavours to] install monitoring systems to monitor the quality of air, including levels of carbon monoxide, and outdoor air intake to the occupied parts of the Base Building and Premises. 2. The Landlord and Tenant install provide reports containing details of the indoor air quality of the Base Building or Premises to the other party each [month/quarter]. 3. The Landlord and Tenant [will / will use reasonable endeavours to] reduce pollutants entering the Base Building and Premises. | Parties may be concerned with the cost of monitoring indoor air quality. | Any costs of monitoring or improving indoor quality may be justified by studies that show it results in higher levels of employee health, leading to increased attendance at work. |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| none noted | 1.2 Hazardous materials   1. The Landlord will obtain a hazardous materials report of the Building every [insert #] years. The report will assess the levels of the following in the Building:    1. asbestos;    2. synthetic mineral fibres;    3. lead; and    4. polychlorinated biphenyls. 2. The Landlord [will / will use reasonable endeavours to] have hazardous materials removed from the building. | none noted | none noted |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| none noted | 1.3 Building comfort levels   1. The Tenant and the Landlord: 2. [will / will use reasonable endeavours to] implement a process to measure, monitor and manage lighting levels, including levels of natural daylight, in regularly occupied parts of the Base Building and Premises. 3. [will / will use reasonable endeavours to] implement a process to measure, monitor and manage thermal comfort levels, including temperature, relative humidity and air speed in regularly occupied parts of the Base Building and Premises. 4. [will / will use reasonable endeavours to] implement a process to measure, monitor and manage acoustic levels of regularly occupied parts of the Base Building and Premises. 5. [will / will use reasonable endeavours to] carry out surveys every [quarter/year] that assess the comfort and satisfaction of occupants with the indoor air quality, thermal comfort, and acoustics of the Base Building and Premises. Surveys are to be provided to the other party within [insert #] days of the survey being completed. | none noted | none noted |

## 5 Sustainable Utilities

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| **PRESENCE TEST** | | | **FURTHER INSTRUCTION** | |  | | | |
| Does the lease encourage, facilitate or require the parties to discuss procurement of more sustainable utilities/offsets or install plant and equipment to enable the generation and on-sale of sustainable utilities? | | | Clauses could relate to:   * on-sale of electricity, gas or water * on-sale of certified renewable sources of a utility (eg. Australian GreenPower or NCOS Offsets) * installation of renewable energy plant and equipment, cogeneration plant and equipment or embedded energy networks * installation of recycled water facilities * installation of demand management systems. | |  | | | |
| **OVERVIEW** | | |  | |  | | | |
| In the event that a building begins to produce its own electricity, gas or water (including recycled water) it is important that tenants are able to purchase this from the landlord under the lease. | | |  | |  | |  | |
| **SAMPLE CLAUSES** | |  | |  | | | | |
| NOTES | CLAUSE | | | | | CONCERN/RISK | | MITIGATION | |
| none noted | 1.1 On-sale of Utilities  If the Landlord offers to supply any utilities (including water, electricity and gas) to the Tenant:   1. the Tenant may elect to purchase utilities from the Landlord; 2. the price to be charged for the supply of utilities will be [the maximum allowable amount under applicable legislation / $[insert rate]]; 3. the Landlord [will/will not] impose any charge for access to the Landlord’s internal utility networks; 4. the Tenant must pay the Landlord for the utilities within [insert #] days of the Tenant being billed by the Landlord; and 5. if the Tenant defaults in payment of any account rendered by the Landlord for any utility, the Landlord may (in addition to any other rights) disconnect the supply of the utility. The reasonable cost of the disconnection and of any reconnection of the utility will be payable immediately on demand. | | | | | Tenants may be concerned that landlords will require them to purchase utilities at a higher cost then they would need to pay if obtaining utilities directly from a supplier. | | This clause is drafted in a way that ensures that tenants will not be required to pay an amount over the market rate available to them. Note: tenants may also be protected from being required to pay more than the available retail market rate by regulation. | |

## 6 Sustainable Cleaning

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| **PRESENCE TEST** | | **FURTHER INSTRUCTION** | |  | |
| Does the lease encourage, facilitate or require cleaners to use environmentally friendly cleaning products? | | Clauses could relate to:   * cleaners being required to use environmentally friendly cleaning products * adhere to the building’s waste strategy | |  | |
| **OVERVIEW** | |  | | **ADDITIONAL BENEFITS** | |
| Cleaning products and waste from cleaning services have the potential to have a significant impact on the environment.  The Australasian Procurement and Construction Council (APCC) Sustainable Procurement Product Guide, Cleaning Services, provides sustainable procurement guidelines for participating governments which contains useful information in relation to cleaning services.  For the APCC Guide go to: [***http://www.apcc.gov.au/***](http://www.apcc.gov.au/) | |  | | **Green Star - Performance**  Cleaning Contracts and their scope of works may be used as an input into Green Star – Performance compliance requirements. |  |
| **SAMPLE CLAUSES** |  | |  | | |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| none noted | 1.1 Cleaning Contracts  The Landlord and the Tenant, as the case may be, [must/must use reasonable endeavours to] ensure that its cleaning contracts (and where relevant, cleaning contracts entered into by any sub-tenant) require cleaners to comply with any building waste strategies or energy or water reduction strategies as relevant, and use, where possible, products which are:   1. natural; 2. solvent free; and 3. hydrocarbon free. | Parties may be concerned about the costs of requiring cleaners to comply with this clause. | Many cleaners now use products which are more sustainable as standard practice so requiring these to be used in leases may not result in increased cleaning costs.  Selecting the wording option “reasonable endeavours” may mean that parties will not be bound to require cleaners to comply with this clause if it will result in significant costs and/or disruption to operations. |

## 7 Sustainable Transport

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| **PRESENCE TEST** | | **FURTHER INSTRUCTION** | |  | |
| Is sustainable or alternative transport encouraged, facilitated or required under the lease? | | Clauses could relate to:   * preparation of an alternative transport report * sharing of information relating to public transport, environmentally low impact transport * end of trip facilities * bicycle racks * car share services. | |  | |
| **OVERVIEW** | | **DEFINITIONS** | | **ADDITIONAL BENEFITS** | |
| Alternative transport programs or green travel plans are programs that facilitate, promote and encourage the regular building occupants and visitors to the building to use alternative transportation modes, for example by:   * using public transport, * walking to work, or * cycling to work. | | Alternative Transport Program or green travel plans means a program agreed between the parties that facilitates, promotes and encourages the use of alternative transportation modes by regular Building occupants and visitors to the Building. | | **Green Star – Performance**  Sustainable Transport Program information may be used as an input into Green Star – Performance compliance requirements. | **Green Star - Interiors**  Sustainable Transport Programs may be used to demonstrate compliance with Green Star – Interiors. |
| **SAMPLE CLAUSES** |  | |  | | |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| none noted | 1.1 Alternative Transport Program  The Landlord and the Tenant will cooperate with each other and [must/use reasonable endeavours] to:   1. prioritise spaces for:    1. on-site bicycle storage racks;    2. showers and changing facilities for cyclists; and    3. small cars, mopeds or motorbikes; 2. develop an Alternative Transport Program/green travel plans; and 3. undertake transport modes surveys that assess the transport of the Building’s regular occupants. | Parties may be concerned that the inclusion of a clause relating to alternative transport in a lease will result in increased costs for parties. | Selecting the wording option “reasonable endeavours” may mean that parties will not be bound to implement strategies that will result in significant costs and/or disruption to operations. |

## 8 Sustainable Procurement

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| **PRESENCE TEST** | **FURTHER INSTRUCTION** |  | |
| Does the lease encourage, facilitate or require the reduction of consumption of goods within the building or premises and/or the sourcing of sustainable or ethical goods? | Clauses could relate to:   * reduction of paper consumption by double sided printing * supply of biodegradable materials (eg. coffee cups) * use of recycled paper * building materials * other goods or materials. |  | |
| **OVERVIEW** |  |  | |
| Sustainable Procurement Frameworks are policies, procedures and processes that aim to improve the sustainability of the procurement of an organisation, including by minimising waste and encouraging the purchase of environmentally friendly and ethical products.  Examples of recognised standards for sustainable procurement include:   * Australia New Zealand Government Framework for Sustainable Procurement: [***http://www.apcc.gov.au/SitePages/Procurement.aspx***](http://www.apcc.gov.au/SitePages/Procurement.aspx), and * British Standard 8903:2010. |  |  |  |
| Definitions |  | ADDITIONAL BENEFITS |  |
| Sustainable Procurement Framework means a procurement framework that encourages the purchase of only goods that are necessary and the procurement of goods and/or services that reduce the negative impacts and encourage positive outcomes for the environment, economy and society. |  | **Green Star – Performance**  Sustainable Procurement information may be used as an input into Green Star – Performance compliance requirements. | **Green Star - Interiors**  Sustainable Procurement information may be shared with tenants and used to demonstrate compliance with Green Star – Interiors. |

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| **SAMPLE CLAUSES** | |  |  | | |
| NOTES | CLAUSE | | | CONCERN/RISK | MITIGATION | |
| none noted | 1.1 Sustainable Procurement  The [Landlord/Tenant] [has in place / will use reasonable endeavours to develop] a Sustainable Procurement Framework that applies to the [Premises/Base Building / Base Building and Premises] that meets industry recognised guidelines. The Sustainable Procurement Framework [includes / must include]:   1. policies relating to what sustainable procurement means to the Landlord; 2. processes that ensure that goods purchased for the [Premises/Base Building / Base Building and Premises] are selected with regard to the environmental and social practices of suppliers; 3. details on how purchasing of goods will be monitored, measured and reported for the [Premises/Base Building / Base Building and Premises]; 4. strategies to reduce the amount of goods purchased for the [Premises/Base Building / Base Building and Premises]. undertake transport modes surveys that assess the transport of the Building’s regular occupants. | | | Parties may be concerned that changing processes to meet the requirements of a Sustainable Procurement Framework will result in operational and increased product costs.  Parties that do not have a Sustainable Procurement Framework in place may be concerned that the development and implementation of a Sustainable Procurement Framework will result in costs. | Organisations that undertake analysis of procurement processes and develop a Sustainable Procurement Framework are likely to benefit from:   * costs savings due to identified opportunities, for example, by bulk purchasing * an enhanced reputation as a responsible corporate citizen, or * avoiding risks created by dealing with unethical companies.   Selecting the wording option “reasonable endeavours” may mean that parties will not be bound to implement strategies that will result in significant costs and/or disruption to operations. | |

# Reporting and Standards

## 1 Information Sharing

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| **PRESENCE TEST** | **FURTHER INSTRUCTION** |  | |
| Does the lease encourage, facilitate or require information sharing? | Information to be shared could relate to:   * energy or water consumption * production of waste or greenhouse gases * recycling rates   Examples of sharing information could include providing the Landlord access to the Tenant’s NMI meter or monthly automated reports being sent to both parties. |  | |
| **OVERVIEW** |  |  | |
| Data sharing and reporting are important to enable parties to identify and understand how their building is operating.  Reporting obligations ensure that data is maintained and shared.  Good recordkeeping and sharing information will help parties to make informed choices about environmental strategies likely to have the most positive effect. |  |  |  |
| **“Campaigns on occupant engagement using shared data have improved awareness of consumption and delivered average energy savings of 15%.”** |  |  |  |

**Emlyn Keane** - Head of Property Management and Sustainability Performance, AMP Capital

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| **SAMPLE CLAUSES** |  |  |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| none noted | 1.1 Data Sharing   1. Each party [will use reasonable endeavours to] provide the other with information relating to the energy efficiency and sustainability of the Premises and Building. 2. Information to be provided under clause 1.2(a) includes all plans, documents, maintenance contracts, specifications, maintenance reports and maintenance schedules (excluding information that is confidential to a party or cannot be disclosed by law) that the parties have regarding:    1. electricity and gas (which shows consumption data);    2. water consumption;    3. material use;    4. waste generation; and    5. waste management, including recycling, for the Building and the Premises. 3. The parties must keep all information provided under clause 1 secure and confidential except to the extent necessary: 4. to comply with a Law; or 5. to enable the Parties to perform their roles and obligations under the Lease; 6. as required for any dispute resolution process in this Lease; or 7. if permitted by the other party, for other purposes, including, corporate reporting or marketing. | Parties may be reluctant to share information with each other due to the perceived confidential nature of the information and the cost of collating and providing that information. | The clause does not require the parties to share confidential information but where they choose it also requires that the recipient of information keeps the information confidential.  If it is made clear to the parties upfront that the reason for sharing the information is to improve the performance of the building then the parties may be more prepared to share information due to the potential cost savings and positive effect on the environment. |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| none noted | 1.2 Required Reports   1. The Landlord and the Tenant agree to provide (within the nominated timeframes) the energy, water and waste data information (which shows consumption data and cost) for the Premises and the Building reports to each other by [insert date]. 2. The Landlord and the Tenant agree to provide updated reports to each other no less than [insert #] per [month/quarter/year]. 3. Reports provided under clause 1.2(b) must include:    1. a reasonably detailed assessment or description of the progress and performance of the [party/parties] against any relevant targets, strategies or plans;    2. descriptions of how the progress and performance was monitored over the relevant reporting period;    3. if progress or performance has not met (or is likely not to meet) a reasonable target, strategy or plan explain why and how the failure may be remedied or performance improved;    4. new, updated or revised targets, strategies and plan is more or a confirmation of the existing targets, strategies and plans for the next reporting period with supporting reasoning;    5. cost savings achieved for that reporting period; and    6. any other relevant information. | none noted | The landlord may consider producing a pro-forma report for the tenant during lease negotiations so the tenant is aware of the information required at the outset. |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| Under the National Greenhouse and Energy Reporting Act 2007 (NGER Act) a party is responsible for reporting under the Act if they have “operational control” over a facility.  Under clause 11 of the NGER Act, operational control is determined by, among other things, whether a party has the authority to introduce and implement any or all of the following for the facility, which includes a building operation policies; health and safety policies; and environmental policies.  In the property industry, parties will often share responsibility for introducing and implementing policies on operations, health and safety policies and environment for the same building. It is therefore important that parties agree who has operational control over a facility at the outset and document such agreement, for example, by including it in the lease. | 1.3 Responsibility for NGERS Reporting   1. The Landlord and the Tenant agree to provide (within the nominated timeframes) the energy, water and waste data information (which shows consumption data and cost) for the Premises and the Building reports to each other by [insert date]. 2. The Landlord and the Tenant agree to provide updated reports to each other no less than [insert #] per [month/quarter/year]. 3. Reports provided under clause 1.2(b) must include: 4. a reasonably detailed assessment or description of the progress and performance of the [party/parties] against any relevant targets, strategies or plans; 5. descriptions of how the progress and performance was monitored over the relevant reporting period; 6. if progress or performance has not met (or is likely not to meet) a reasonable target, strategy or plan explain why and how the failure may be remedied or performance improved; 7. new, updated or revised targets, strategies and plan is more or a confirmation of the existing targets, strategies and plans for the next reporting period with supporting reasoning; 8. cost savings achieved for that reporting period; and 9. any other relevant information. | none noted | The landlord may consider producing a pro-forma report for the tenant during lease negotiations so the tenant is aware of the information required at the outset. |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| none noted | 1.4 Costs  The Landlord and the Tenant will bear their own costs in connection with the provision of data and reports under clause 1. | none noted | none noted |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| none noted | 1.5 Access to NMI for Energy Management and Information Sharing   1. The Landlord may access the Premises at any reasonable time after giving the Tenant reasonable prior written notice, to read the [NMI] meters in the Premises. 2. The Tenant will provide the information obtained from reading the [NMI] meters in the Premises to the Tenant. | none noted | none noted |

## 2 Performance Rating

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| **PRESENCE TEST** | **FURTHER INSTRUCTION** |  |
| Does the lease encourage, facilitate or require BOTH parties to commit to / not interfere with a building performance rating (such as NABERS or Green Star Performance)? | Clauses could relate to:   * achievement of a rating * maintenance of a rating * cooperating with the other party to assist them in obtaining a rating * cooperating with the other party to assist them in achieving a higher than previously achieved rating * sharing rating certificates when achieved or as requested * not interfering with ratings through works or operations * not making claims against the other party if they breach the lease due to an attempt to improve the performance of the building to achieve a rating |  |
| **OVERVIEW** |  |  |
| NABERS is a national rating system that provides four environmental rating tools to measure the actual operational performance of existing buildings and tenancies.  NABERS Ratings are an essential tool for benchmarking and tracking performance over time.  The NABERS Rating tools are available for tenancies, base buildings and whole buildings:  » NABERS Energy;  » NABERS Water (only whole building);  » NABERS Waste; and  » NABERS Indoor Environment.  NABERS uses 12 months of measured performance information to compare the performance of a building or tenancy to benchmarks that represent the performance of other similar buildings in the same location.  NABERS then provides a star rating to a building or tenancy.  Stars may be from one to six stars for NABERS Energy and Water tools, or one to five stars for NABERS Indoor Environment and Waste. | NABERS Ratings are valid for twelve months.  For more information about NABERS Ratings go to:  [***www.nabers.gov.au***](http://www.nabers.gov.au)  For information on CitySwitch go to: [***www.cityswitch.net.au***](http://www.cityswitch.net.au)  Parties may be concerned about the costs of obtaining a NABERS rating assessment or the capital costs of upgrading a building or tenancy to achieve a target NABERS Rating.  Parties may be reluctant to commit to target NABERS Ratings due to concerns surrounding costs if target ratings are not achieved.  The ability for landlords and tenants to deliver absolute performance ratings may be hampered by factors beyond their immediate control.  For example:   * severe weather patterns, * vacancy risk, and * tenant operations. | CitySwitch may be able to assist parties with the costs of obtaining a NABERS Rating assessment.  Parties should note that significant NABERS gains may be achieved by operational changes to buildings.  Consequences of failing to meet a NABERS Rating commitment can be adjusted to suit the parties risk profiles.  Examples of consequences for failure to meet a NABERS rating target are:   * costs for failure to meet a target * dispute resolution * payment for GreenPower to make up the difference between a target NABERS Energy Rating and the NABERS Energy Rating achieved, and * reduction in rent.   The parties may agree to target ratings on a good faith basis, for example, by choosing a reasonable endeavours commitment.  Parties should ensure that they are aware of the requirements relating to NABERS Ratings before agreeing to achieve Target NABERS Ratings. |

[Drafting note: Delete ratings that do not apply from the definitions and adjust clauses which use the definitions as applicable under the Lease.]   
[Drafting note: If the Target NABERS Rating is the same as the current NABERS rating, the relevant definition of the existing NABERS rating (being the Current Base Building NABERS Rating, Current Tenancy NABERS Rating or Current Whole Building NABERS rating) will need to be deleted.]

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| **DEFINITIONS** |  | |  | |
| **Adjusted NABERS Rating** means a rating under NABERS being an adjustment to a Target NABERS Rating;  Base Building means the structure, roof, external walls of the Building and Services installed by the Landlord (including Common Areas) but does not include any services, facilities or fitout installed by or on behalf of any tenant or other occupier of premises in the Building.  [Drafting note: If the Building is a new building, or has undergone major refurbishment, a Base Building NABERS Rating may not be able to be obtained until certain criteria have been fulfilled.]  **Base Building NABERS Rating** means the following:   1. a valid, current NABERS Energy rating for the Base Building; 2. a valid, current NABERS Indoor Environment rating for the Base Building; or 3. a valid, current NABERS Waste rating for the Base Building;   [Drafting note: If the Building is a new building, or has undergone major refurbishment, a Current Base Building NABERS Rating may not be able to be obtained until certain criteria have been fulfilled.]  **Current Base Building NABERS Rating** means the following:   1. a [insert #] star NABERS Energy rating for the Base Building [including/excluding GreenPower]; 2. a [insert #] star NABERS Indoor Environment rating for the Base Building; or 3. a [insert #] star NABERS Waste rating for the Base Building;   [Drafting note: A Current Tenancy NABERS Rating may only be relevant if the Tenant is an existing Tenant, or if the Tenant is re-using fitout from a previous tenant.]  Current Tenancy NABERS Rating means the following:   1. a [insert #] star NABERS Energy rating for the Premises [including/excluding GreenPower]; 2. a [insert #] star NABERS Indoor Environment rating for the Premises; or 3. a [insert #] star NABERS Waste rating for the Premises;   [Drafting note: If the Building is a new building, or has undergone major refurbishment, a Current Whole Building NABERS Rating may not be able to be obtained until certain criteria have been fulfilled.] | | **Current Whole Building NABERS Rating** means the following:   1. a [insert #] star NABERS Energy rating for the Whole Building [including/excluding GreenPower]; 2. a [insert #] star NABERS Indoor Environment rating for the Whole Building; 3. a [insert #] star NABERS Waste rating for the Whole Building; or 4. a [insert #] star NABERS Water rating for the Whole Building;   [GreenPower means energy produced under a GreenPower Product accredited by the National GreenPower Accreditation Program or its successor;]  **NABERS** means the National Australian Built Environment Rating System administered by the NSW Office of Environment and Heritage (or by any successor or other body administering NABERS from time to time), in the form in which it applies at the Commencing Date;  **Target Base Building NABERS Rating** means the following:  a [insert #] star NABERS Energy rating for the Base Building [including/excluding GreenPower];  a [insert #] star NABERS Indoor Environment rating for the Base Building; or  a [insert #] star NABERS Waste rating for the Base Building;  Target NABERS Rating means:   1. a Target Base Building NABERS Rating; 2. a Target Tenancy NABERS Rating; or 3. a Target Whole Building NABERS Rating,   as adjusted in accordance with clause 1.4;  **Target Tenancy NABERS Rating** means the following:   1. a [insert #] star NABERS Energy rating for the Premises [including/excluding GreenPower]; 2. a [insert #] star NABERS Indoor Environment rating for the Premises; or 3. a [insert #] star NABERS Waste rating for the Premises; | | **Target Whole Building NABERS Rating** means the following:   1. a [insert #] star NABERS Energy rating for the Premises [including/excluding GreenPower]; 2. a [insert #] star NABERS Indoor Environment rating for the Premises; 3. a [insert #] star NABERS Waste rating for the Premises; or   a [insert #] star NABERS Water rating for the Premises;  **Tenancy NABERS Rating** means the following:   1. a valid, current NABERS Energy rating for the Base Building; 2. a valid, current NABERS Indoor Environment rating for the Base Building; or 3. a valid, current NABERS Waste rating for the Base Building;   **Whole Building** means the whole building and includes the Base Building and any tenanted areas within the Building, including the Premises;  [Drafting note: If the Building is a new building, or has undergone major refurbishment, a Whole Building NABERS Rating may not be able to be obtained until certain criteria have been fulfilled.]  **Whole Building NABERS Rating** means the following:   1. a valid, current NABERS Energy rating for the Whole Building; 2. a valid, current NABERS Indoor Environment rating for the Whole Building; 3. a valid, current NABERS Waste rating for the Whole Building; or 4. a valid, current NABERS Water rating for the Whole Building;   **GBCA** means the Green Building Council of Australia or any successor;  **Green Star Performance Rating** means a valid, current Green Star – Performance rating certified by the GBCA for the Building;  **Current Green Star Performance Rating** means a [insert #] star Green Star – Performance v[insert version #] rating certified by the GBCA;  **Target Green Star Performance** Rating means a [insert #] star Green Star – Performance v[insert version #]rating certified by the GBCA; |

## 2.1 NABERS (Simple)

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| **SAMPLE CLAUSES** |  |  |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| Alternative “light” NABERS clause | 1.1 NABERS (Simple)   1. The [Landlord/Tenant] may at its cost establish (where applicable) NABERS certification for the [Building/Premises], and will endeavour to continually improve the Building’s NABERS rating. 2. The [Landlord/Tenant] will keep the other party informed of the NABERS rating of the [Building/Premises] and of any initiatives being considered by the Landlord, from time to time, to improve the environmental performance of the [Building/Premises]. | This clause enables parties to state their intention to obtain a NABERS rating, but does not impose any consequences for failure to meet a NABERS rating. | none noted |

## 2.2 NABERS Rating

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| Base building NABERS Ratings assess the performance of the central services of the building during the rating period.  Base building areas may include:   * common-areas (for example, lift lobbies, * foyers, plant rooms and common area toilets) * lifts and escalators * air conditioning and ventilation, including base building services to meet normal requirements and centralised supplementary services provided for tenants.   Often tenants and landlords advertise the NABERS Rating of a base building to demonstrate their commitment to sustainability. | 1.1 Base Building NABERS Rating   1. Subject to clause 1.1(b), the Landlord [will/will use its reasonable endeavours to] ensure that the Current Base Building NABERS Rating is maintained for the Term. 2. The Landlord [will / will use its reasonable endeavours to] ensure that the Target Base Building NABERS Rating is: 3. if not achieved at the Commencing Date, achieved by [insert date]; and 4. maintained for the Term. 5. The Landlord [will/will use its reasonable endeavours to] obtain a Base Building NABERS Rating on an annual basis and deliver to the Tenant a copy of an accredited Base Building NABERS Rating certificate no less than once per annum during the Term. 6. The Tenant must: 7. comply with the Landlord’s reasonable requirements in relation to maintaining a Base Building NABERS Rating (including the Current Base Building NABERS Rating and the Target Base Building NABERS Rating) and: 8. [must not / must use reasonable endeavours not to] do: 9. [anything to interfere with the Base Building NABERS Rating.   OR  any of the following:   * + - * 1. [list specific actions that the Tenant must not do which may affect the Base Building NABERS Rating]   ]. | Clause 1.1(a) and 1.1(b) - Landlords may be reluctant to commit to target Base Building NABERS Ratings due to concerns surrounding costs if target ratings are not achieved.  The ability for landlords to deliver absolute performance ratings may be hampered by factors beyond their immediate control.  For example:   * severe weather patterns, * vacancy risk, and * tenant operations.   Clause 1.1(c) - some clauses requiring the provision of NABERS Rating certificates to tenants are drafted relative to the commencing date of leases. This may result in a practically difficult situation for landlords with large numbers of tenants.  Clause 1.1(d) - Tenants may be concerned that the wording “must not do anything to interfere with the Building NABERS Rating” is broad and will impose unforeseen obligations or costs on the tenant. | Clause 1.1(a) and 1.1(b) - The level of risk associated with commitments to Base Building NABERS ratings will be determined by the mechanisms under the lease.  If the wording “will use reasonable endeavours to” is selected and the landlord does not achieve a Base Building NABERS Rating but has undertaken all reasonable steps to attain the rating, the landlord may not be subject to consequences for its failure.  Consider specifying exactly what constitutes “reasonable endeavours” to provide further clarity under the lease.  For example, the landlord may be required to obtain a report from an independent expert confirming the steps that the landlord has taken and that such steps either constitute all reasonable endeavours, or, what additional steps need to be undertaken.  Clause 1.1(c) - this clause is drafted so that the landlord may deliver the Base Building NABERS Rating certificates to all of its tenants at the one time.  The result is that the tenant receives the information on an annual basis and the paperwork for the landlord is minimised.  Clause 1.1(d) - If tenants interfere with Base Building NABERS Ratings they are likely to be engaging in activities which are in conflict with their permitted use of the building.  Listing specific activities that constitute interference may be more acceptable to a tenant then a blanket statement. Examples of activities include:  connecting equipment to the base building electricity supply;  emptying rubbish in base building waste receptacles. |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| NABERS Tenancy Ratings assess the performance of the occupant of a premises during a rating period.  Tenants often advertise the NABERS Rating of a Tenancy to demonstrate their commitment to sustainability. Landlords are less likely to advertise individual Tenancy NABERS Ratings unless it is in the context of a whole building rating.  Landlords may find it useful to encourage and recommend NABERS Tenancy Ratings in fit-out guides. | 1.2 Tenancy NABERS Rating  [Drafting note: Delete (a) if the Building does not have a Current Base Building NABERS Rating or if the Current Base Building NABERS Rating is the same as the Target Base Building NABERS Rating.]  [Drafting note: if you select (a) and (b) consider selecting the option “must” under clause (a).]   1. Subject to clause 1.2(b), the Tenant [will/will use its reasonable endeavours to] ensure that the Current Tenancy NABERS Rating is maintained for the Term. 2. The Tenant [will/will use its reasonable endeavours to] ensure that the Target Tenancy NABERS Rating is: 3. achieved by [insert date]; and 4. maintained for the Term. 5. The Tenant will obtain a Tenancy NABERS Rating on an annual basis and deliver to the Landlord a copy of an accredited Tenancy NABERS Rating certificate no less than once per annum during the Term. 6. The Landlord [must not / must use reasonable endeavours not to] not do anything to interfere with a Tenancy NABERS Rating (including the Current Tenancy NABERS Rating and Target Tenancy NABERS Rating), unless such action is necessary to protect the Services or the Building. | Clause 1.2(a) and (b) - Tenants may be reluctant to commit to target Tenancy NABERS ratings due to concerns surrounding costs if target ratings are not achieved.  The ability for tenants to deliver absolute performance ratings may be hampered by factors beyond their immediate control.  For example:   * in-house data centres, * HVAC, and * inefficient lighting operations   Clause 1.2(c) - Landlords may be concerned that the wording “must not do anything to interfere with the Building NABERS Rating” will prevent them from maintaining their asset.  Clause 1.2(d) - Landlords may be concerned that the wording “must not do anything to interfere with the Tenancy NABERS Rating” is broad and may hamper the landlord in dealing with its building. | Clause 1.2(a) and (b) - the level of risk associated with commitments to Tenancy NABERS ratings will be determined by the mechanisms under the lease.  If the wording “will use reasonable endeavours to” is selected and the Tenant does not achieve a Tenancy NABERS rating but has undertaken all reasonable steps to attain the rating, the Tenant may not be subject to consequences for its failure.  Consider specifying exactly what constitutes “reasonable endeavours” to provide further clarity under the lease.  For example, the Tenant may be required to obtain a report from an independent expert confirming the steps that the Tenant has taken and that such steps either constitute all reasonable endeavours, or, what additional steps need to be undertaken.  Clause 1.2(c) - This risk is mitigated by the last part of the clause stating “unless such action is necessary to protect the Services or the Building”.  Clause 1.2(d) - The landlord’s risk is mitigated by the wording “unless such action is necessary to protect the Services or the Building” at the end of clause 1.2(d). |
| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| A Whole Building NABERS Rating is an assessment of the performance of the base building and tenancy combined. Parties may wish to obtain a Whole Building NABERS Rating if a building does not have sufficient sub metering in place for base building and tenancy NABERS Ratings. Alternatively the landlord and tenant may be interested in assessing the performance of the building on a holistic basis.  Examples of reasons that a landlord may require a tenant with control over a whole building to obtain and maintain a Whole Building NABERS Rating are:   * the landlord reports on the performance of its buildings, or * the landlord intends to sell or lease the building, in which case the NABERS Rating may be required to be disclosed under the Building Energy Efficiency Disclosure Act 2010 (Cth).   NABERS Water Ratings may only be obtained on a whole building basis. | [Drafting note: Whole Building NABERS Ratings are more often obtained by Landlords. However where a Tenant has leased a whole building and has control over the base building the Tenant may obtain a Whole Building NABERS rating. In this instance, replace the references in this clause to “Landlord” with “Tenant”.]  **1.3 Whole Building NABERS Rating**  [Drafting note: Delete (a) if the Building does not have a Current Base Building NABERS Rating or if the Current Base Building NABERS Rating is the same as the Target Base Building NABERS Rating.]  [Drafting note: if you select (a) and (b) consider selecting the option “must” under clause (a)].   1. Subject to clause 1.3(b), the Landlord [will/will use its reasonable endeavours to] ensure that the Current Whole Building NABERS Rating is maintained for the Term. 2. The Landlord [will / will use its reasonable endeavours to] ensure that the Target Whole Building NABERS Rating is: 3. achieved by [insert date]; and 4. maintained for the Term. 5. The Landlord [will/will use reasonable endeavours to] obtain a Whole Building NABERS Rating on an annual basis and deliver to the Tenant a copy of an accredited Whole Building NABERS Rating certificate no less than once per annum during the Term. 6. The Tenant must: 7. comply with the Landlord’s reasonable requirements in relation to maintaining a Whole Building NABERS Rating (including the Current Whole Building NABERS Rating and the Target Whole Building NABERS Rating); and 8. [must not / must use reasonable endeavours not to] do: 9. [anything to interfere with the Whole Building NABERS Rating unless such action is necessary to protect the Services or the Building.   OR  any of the following:  [list specific actions that the Tenant must not do which may affect the Whole Building NABERS Rating]  ] | Clause 1.3(a) and (b) - Landlords and tenants may be reluctant to commit to target NABERS Ratings due to concerns surrounding costs if target ratings are not achieved.  The ability for landlords to deliver absolute performance ratings may be hampered by factors beyond their immediate control.  For example:   * severe weather patterns, * vacancy risk, and * tenant operations.   Clause 1.3(c) - some clauses requiring the provision of NABERS Rating certificates to tenants are drafted relative to the commencing date of leases. This may result in a practically difficult situation for landlords with large numbers of tenants.  Clause 1.3(d) - Tenants may be concerned that the wording “must not do anything to interfere with the Whole Building NABERS Rating” is broad and will impose unforeseen obligations or costs on the landlord or tenant.  Landlords may be concerned that the wording “must not do anything to interfere with the Whole Building NABERS Rating” is broad and may hamper the landlord in dealing with its building. | Clause 1.3(a)and (b) - The level of risk associated with commitments to Tenancy NABERS Ratings will be determined by the mechanisms under the lease.  If the wording “will use reasonable endeavours to” is selected and the tenant does not achieve a Tenancy NABERS Rating but has undertaken all reasonable steps to attain the rating, the tenant may not be subject to consequences for its failure.  Consider specifying exactly what constitutes “reasonable endeavours” to provide further clarity under the lease.  For example, the tenant may be required to obtain a report from an independent expert confirming the steps that the tenant has taken and that such steps either constitute all reasonable endeavours, or, what additional steps need to be undertaken.  Clause 1.3(c) - This clause is drafted so that the landlord may deliver the Whole Building NABERS Rating certificates to all of its tenants at the one time.  The result is that the tenant receives the information on an annual basis and the paperwork for the landlord is minimised.  Clause 1.3(d) - If tenants interfere with a Whole Building NABERS Rating they may be engaging in activities which are in conflict with their permitted use of the building.  Listing specific activities that constitute interference may be more acceptable to a tenant then a blanket statement. Examples of activities include:  connecting equipment to the base building electricity supply;  emptying rubbish in base building waste receptacles.  Clause 1.3(d) - The landlord’s risk is mitigated by the wording “unless such action is necessary to protect the Services or the Building” at the end of clause 1.2(d). |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| This clause creates a mechanism for the parties to adjust NABERS Ratings where parties have acted in good faith and undertaken reasonable efforts to obtain a Target NABERS Rating.  When deciding whether to use this clause, parties should determine their expectations in relation to the other party achieving a NABERS Rating.  For example,   * A tenant moving into a building because it expects the landlord to achieve a Base Building NABERS Rating may not want to agree to this clause. * A landlord may find this clause acceptable if it satisfied that the tenant will use its best endeavours to obtain a Tenancy NABERS Rating. | **1.4 Adjusted NABERS Rating**   1. If a party reasonably believes that the Target NABERS Rating for which it is responsible cannot be achieved then provided: 2. that party gives written notice to the other party stating the reasons why the Target NABERS Rating cannot be achieved and requesting an Adjusted NABERS Rating (Adjustment Notice); 3. that party has taken all reasonable measures to achieve the Target NABERS Rating; 4. the inability to achieve the Target NABERS Rating is not due to any misrepresentation regarding the condition or capacity or the Building, the Services or the Premises or deterioration in or failure of relevant parts of the Building, the Services or the Premises or to activities in the Building or the Premises; and 5. that party, or the parties together, has or have exhausted all reasonable avenues to achieve the Target NABERS Rating, the Adjusted NABERS Rating will become the Target NABERS Rating. 6. Once the Adjustment Notice is given, the other party may agree to the request for an Adjusted NABERS Rating in writing within [insert #] days. 7. If the other party does not accept the request for an Adjusted NABERS Rating, or respond within the time period in clause 1.4(b), the request may be referred by either or both parties for resolution by an Expert appointed under the processes in the Lease. | none noted | none noted |

## 2.3 Green Star

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| Green Star - Office Design rating tools evaluate the environmental potential of the design of commercial offices (base buildings), for both new and refurbished projects.  Green Star - Office As Built rating tools assess the delivery of the same design criteria as in Green Star - Office Design, but at construction completion.  For more information on the Green Star Office Design Rating go to: [***www.gbca.org.au/green-star/rating-tools/green-star-office-design-v2/1532.htm***](www.gbca.org.au/green-star/rating-tools/green-star-office-design-v2/1532.htm)  For more information on the Green Star Office As Built Rating go to: [***www.gbca.org.au/green-star/rating-tools/green-star-office-as-built-v2/1533.htm***](www.gbca.org.au/green-star/rating-tools/green-star-office-as-built-v2/1533.htm) | **1.1 Green Star – Office Design and As Built Ratings**   1. The Landlord [will / will use its reasonable endeavours to] obtain a Green Star Office Design Rating by [insert date] and deliver to the Tenant a copy of the Green Star Office Design Rating certificate within [insert #] days of obtaining the certificate. 2. The Landlord [will / will use its reasonable endeavours to] obtain a Green Star Office As Built Rating by [insert date] and deliver to the Tenant a copy of the Green Star Office As Built Rating certificate within [insert #] days of obtaining the certificate. | none noted | none noted |
|  |  | ADDITIONAL BENEFITS |  |
|  |  | Green Star - Interiors  Selecting a site with a Green Star - As Built or Green Star - Perfomance Rating is rewarded under Green Star - Interiors. |  |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| The GBCA has recently released a new Green Star – Interiors PILOT rating tool, which has been developed to assess and certify all fitout types. Office fitout teams will still be able to register projects for certification under Green Star – Office Interiors v1.1 throughout the Green Star - Interiors PILOT phase. Once the PILOT process is complete, the use of the Green Star – Office Interiors v1.1 rating tool will be gradually phased out, with all fitout projects registering and gaining certification under Green Star – Interiors v1.  Landlords may include requirements for tenants to obtain Green Star Interior Ratings in fitout guides.  For more information on the Green Star Interiors Rating go to: [***www.gbca.org.au/green-star/green-star-interiors***](http://www.gbca.org.au/green-star/green-star-interiors) | **1.2 Green Star Interiors Rating**   1. The Tenant [will / will use its reasonable endeavours to] ensure that the Target Green Star Interiors Rating is achieved by [insert date]. 2. The Tenant will obtain a Green Star Interiors Rating by [insert date] and deliver to the Landlord a copy of the Green Star Interiors Rating certificate within [insert #] days of obtaining the certificate. 3. The Landlord must comply with the Tenant’s reasonable requirements in relation to obtaining the Target Green Star Interiors Rating. | none noted | none noted |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| The Green Star – Performance tool assesses the operational performance of buildings against nine sustainability categories.  Green Star – Performance certifications are valid for three years. Once the certification period is up a building will be re-assessed and re-certified.  For more information on the Green Star - Performance rating go to: [***www.gbca.org.au/green-star/green-star-performance***](http://www.gbca.org.au/green-star/green-star-performance) | **1.3 Green Star Performance Rating**  [Drafting note: Delete (a) if the Building does not have a Current Green Star Performance Rating.]  [Drafting note: if you select (a) and (b) consider selecting the option “must” under clause (a)].   1. Subject to clause 1(b), the Landlord [will/will use its reasonable endeavours to] ensure that the Current Green Star Performance Rating is maintained for the Term. 2. The Landlord [will / will use its reasonable endeavours to] ensure that the Target Green Star Performance Rating is: 3. achieved by [insert date]; and 4. maintained for the Term. 5. The Landlord will obtain a Green Star Performance Rating every three years and deliver to the Tenant a copy of the Green Star Performance Rating certificate no less than once every three years during the Term. 6. The Tenant must: 7. comply with the Landlord’s reasonable requirements in relation to its endeavours to obtain a Green Star Performance Rating or maintain an existing Green Star Performance Rating (including the Current Green Star Performance Rating and the Target Green Star Performance Rating) and 8. [must not / must use reasonable endeavours not to] do:   [anything to interfere with the Green Star Performance Rating.  OR  any of the following:  list specific actions that the Tenant must not do which may affect the Green Star Performance Rating]. | none noted | none noted |
|  |  | ADDITIONAL BENEFITS |  |
|  |  | Green Star - Interiors  Selecting a site with a Green Star - As Built or Green Star - Performance Rating is rewarded under Green Star - Interiors. |  |

## 3 Design/Development Rating

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| **PRESENCE TEST** | | **FURTHER INSTRUCTION** | |  |
| Does the lease encourage, facilitate or require the parties to commit to / not interfere with a design/development rating of the Premises or Building (such as Green Star Design or As Built, LEED or WELL)? | | Clauses could relate to:   * achievement of a rating * maintenance of a rating * cooperating with the other party to assist them in obtaining a rating * cooperating with the other party to assist them in achieving a higher than previously achieved rating * sharing rating certificates when achieved or as requested * not interfering with ratings through works or operations * not making claims against the other party if they breach the lease due to an attempt to achieve a rating | | **“Achieving high environmental ratings reduces exposure to commercial risk and asset obsolescence by ensuring assets are ‘future-ready’.” 1**  **John Dillon**  Fund Manager, APPF Commercial |
| **OVERVIEW** | | **CONCERN/RISK** | | MITIGATION |
| As the industry body that defines best practice in environmental sustainability for building design, construction and performance, the Green Building Council of Australia’s (GBCA) Green Star tools rate buildings on various categories and provide the ability to capture many tenant and landlord priorities in streamlined rating tools. Higher rated buildings boast lower operating costs, greater tenant attraction and retention, healthier workplaces, and enhanced marketability and corporate social responsibility.  For more information on Green Star go to: [***www.gbca.org.au***](www.gbca.org.au) | | Parties may be concerned that achieving Green Star Ratings will result in considerable expenses being incurred. | | Parties should seek advice in relation to the potential costs of obtaining a Green Star Rating and align any commitments to delivery with this advice.  By selecting “reasonable endeavours” options parties may not be bound to implement Green Star strategies that will result in significant costs and/or disruption to building operations. |
| **DEFINITIONS** | |  | |  |
| **GBCA** means the Green Building Council of Australia or any successor;  **Green Star Interiors Rating** means a Green Star – Office Interiors v[insert version #] rating or a Green Star – Interiors v[insert version #] rating certified by the GBCA;  **Green Star Design & As Built Rating** means a [insert #] star Green Star – Design & As Built [insert version #]rating certified by the GBCA; | | [Drafting note: Green Star Design & As Built Ratings expire after two years from practical completions for all projects registered after January 2013.]  **Green Star Performance Rating** means a valid, current Green Star – Performance rating certified by the GBCA for the Building;  **Current Green Star Performance Rating** means a [insert #] star Green Star – Performance v[insert version #] rating certified by the GBCA; | | [Drafting note: A Target Green Star Interiors Rating may apply to an upgrade of an existing fi tout, including following a lease renewal, as well as to a new fitout]  **Target Green Star Interiors Rating** means a [insert #] star Green Star – Office Interiors v[insert version #] rating or a Green Star – Interiors v[insert version #] rating certified by the GBCA;  **Target Green Star Performance Rating** means a [insert #] star Green Star – Performance v[insert version #] rating certified by the GBCA; |
| **SAMPLE CLAUSES** |  | |  | |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| Green Star - Design & As Built rating assesses the sustainability outcomes from the design and construction of new buildings or major refurbishments, across nine holistic impact categories.  For more information on the Green Star - Design & As Built Rating go to: <http://new.gbca.org.au/green-star/rating-system/design-and-built/> | 1.1 Green Star - Design & As Built   1. The Landlord [will / will use its reasonable endeavours to] obtain a Green Star - Design & As Built rating by [insert date] and deliver to the Tenant a copy of the Green Star - Design & As Built Rating certificate within [insert #] days of obtaining the certificate. | none noted | none noted |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| The Green Star – Performance tool assesses the operational performance of buildings against nine sustainability categories.  Green Star – Performance certifications are valid for three years. Once the certification period is up a building will be re-assessed and re-certified.  For more information on the Green Star - Performance rating go to: <http://www.gbca.org.au/green-star/green-star-performance> | 1.2 Green Star - Performance Rating  [Drafting note: Delete (a) if the Building does not have a Current Green Star Performance Rating.]  [Drafting note: if you select (a) and (b) consider selecting the option “must” under clause (a)].   1. Subject to clause 1(b), the Landlord [will / will use its reasonable endeavours to] ensure that the Current Green Star Performance Rating is maintained for the Term. 2. The Landlord [will / will use its reasonable endeavours to] ensure that the Target Green Star Performance Rating is: 3. achieved by [insert date]; and 4. maintained for the Term. 5. The Landlord will obtain a Green Star Performance Rating every three years and deliver to the Tenant a copy of the Green Star Performance Rating certificate no less than once every three years during the Term. 6. The Tenant must: 7. comply with the Landlord’s reasonable requirements in relation to its endeavours to obtain a Green Star Performance Rating or maintain an existing Green Star Performance Rating (including the Current Green Star Performance Rating and the Target Green Star Performance Rating) and 8. [must not / must use reasonable endeavours not to] do:   [anything to interfere with the Green Star Performance Rating.  OR  any of the following:  list specific actions that the Tenant must not do which may affect the Green Star Performance Rating]. | none noted | none noted |
|  |  | **ADDITIONAL BENEFITS** |  |
|  |  | **Green Star - Interiors**  Selecting a site with a Green Star - As Built or Green Star - Performance Rating is rewarded under Green Star - Interiors. |  |

## 4 Performance Standards

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| **PRESENCE TEST** | **FURTHER INSTRUCTION** |  |
| Does the lease encourage or require contractors to maintain building performance standards? | Clauses could relate to:   * works and maintenance contractors being required to adhere to waste programs * works and maintenance contractors being required not to interfere with building performance |  |
| **OVERVIEW** | **CONCERN/RISK** | MITIGATION |
| Operational performance standards enable a positive conversation and framework for collaborating to improve the building for the benefit of both the base building and tenants over prescriptive measures such as temperature set points. For example, parties may use this clause to set out a process for determining what constitutes thermal comfort, in accordance with tenants’ needs. | Parties may be concerned that achieving Green Star Ratings will result in considerable expenses being incurred. | Parties should seek advice in relation to the potential costs of obtaining a Green Star Rating and align any commitments to delivery with this advice.  By selecting “reasonable endeavours” options parties may not be bound to implement Green Star strategies that will result in significant costs and/or disruption to building operations. |
| **“Air conditioning in a typical Australian office  building is generally set to target 22.5°C in  summer, yet this temperature setpoint is well  below comfort standards which recommend  a range from 23 to 26°C. Research shows:**   * up to 10% savings are possible with every 1° the  setpoint is raised. * roughly one third of summertime air conditioning  complaints are because it’s too cold inside.”1 | |  |

1. Src: Buildings Alive (2011). Turn it up...it’s getting hot out there. Retrieved from website:

<http://www.buildingsalive.com/news/turn-it-up-its-getting-hot-out-there/>

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| **SAMPLE CLAUSES** |  |  |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| none noted | 1.1 Landlord to comply  Subject to clause 1.3 the Landlord [must / must use its reasonable endeavours to] provide and operate the Services at all times in accordance with the higher of the:   1. requirements and standards specified in Schedule [insert Schedule prepared by Landlord] (Operational Performance Standards); and 2. the relevant Australian Standards.   [Drafting note - Operational Performance Standards may cover issues such as thermal comfort and lighting levels] | The tenant may be concerned that the landlord will operate the building at conditions that are uncomfortable. | The tenant should have input into the Operational Performance Standards Schedule. Australian Standards will also protect the tenant against uncomfortable comfort levels. |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| Metering and monitoring are critical in reducing consumption. This clause enables tenants to obtain the information they need to lower electricity and other costs and improve indoor environment.  Clause 1.2(a) - this may include equipment to monitor:   * carbon dioxide concentrations; * air speed; * humidity; * particulate matter; * airborne microbials; or * ambient sound levels. | 1.2 Monitor Performance   1. With the Landlord’s permission \(which must not be unreasonably withheld), the Tenant may install within the Premises equipment to monitor the Landlord’s compliance with clause 1.1(a). 2. The Landlord must produce to the Tenant, [Tenant/Landlord’s], when requested, the Landlord’s records relating to the operation and performance of the Services including confirmation that the Building’s heating, cooling and ventilation system and Building Management System have been tuned, commissioned and tested for contaminants in accordance with a regular maintenance program. | none noted | none noted |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| none noted | 1.3 Tenant’s actions   1. The Tenant must not do [anything that affects or prevents the Services from meeting the Operational Performance Standards.   OR  any of the following:   1. list specific actions that the Tenant must not do which may affect the Operational Performance Standards]. | Tenants may be concerned that the wording “must not do anything” is broad and will impose unforeseen obligations or costs on the tenant. | Listing specific activities that constitute interference may be more acceptable to a tenant then a blanket statement. |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| Given that work carried out in premises is likely to be done by external contractors, it is important for landlords and tenants to make sure the actions of those contractors are aligned with the parties’ commitments to sustainability in the lease. | 1.4 Operations and Maintenance  The Landlord and the Tenant, to the extent applicable, will ensure that all maintenance contracts for the Base Building or Premises services include:   1. requirements that the Base Building or Premises services must perform in a way which will not adversely impact upon any existing NABERS rating, Target NABERS Rating, existing Green Star Performance Rating or Target Green Star Performance Rating; 2. reasonable warranties by the contractor and supplier which support, and do not hinder, the ability of the Tenant or Landlord to obtain or maintain any existing NABERS rating, Target NABERS Rating existing Green Star Performance Rating or Target Green Star Performance Rating; 3. a requirement that maintenance contractors at all times maintain and regularly provide manuals and other information relevant to the maintenance and performance of the Base Building or Premises services. | Parties may be concerned that the commercial in-confidence details will be disclosed if contracts are shared. | This clause does not require contracts to be shared. Although, if a party requires evidence that this clause has been complied with, commercially sensitive parts of the contract may be redacted. |

## 5 Metering and Monitoring

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| **PRESENCE TEST** | | | **FURTHER INSTRUCTION** | |  | | | |
| Does the lease require encourage, facilitate or require the premises and building to have separate metering for one or more types of utility? | | | Clauses relating to metering could attribute responsibility for cost and/or installation. To be deemed present, meters do not have to be installed, but must be able to be installed, eg. the landlord cannot prevent the tenant from installing meters. | |  | | | |
| **OVERVIEW** | | |  | | ADDITIONAL BENEFITS | | | |
| Metering enables parties to identify their consumption of energy and water, including, their total usage, and usage patterns and costs.  When parties meter energy and water they may be able to:   * identify opportunities for savings; * use the information to better negotiate with and select service providers; and * obtain NABERS tenancy and base building ratings using accurate date.   To use the metering data for NABERS assessments, the metering system must meet the requirements specified in the NABERS Energy and Water for Oces: Rules for Collecting and Using Data document: [***www.nabers.com.au***](www.nabers.com.au) | | |  | | **Green Star - Performance**  Metering and monitoring outputs may be used as an input into Green Star – Performance compliance requirements. | |  | |
| **SAMPLE CLAUSES** | |  | |  | | | | |
| NOTES | CLAUSE | | | | | CONCERN/RISK | | MITIGATION | |
| none noted | 1.1 Separate Metering  The Landlord [must/use reasonable endeavours to] ensure that from the Commencing Date and during the Term (at the [Landlord’s / Tenant’s] cost):   1. the Base Building (including Common Areas) and Premises, are separately metered for   [Drafting note - choose all utilities that apply]   1. electricity 2. gas 3. water; and 4. metering equipment has an accuracy class suitable for customer billing and assessments under NABERS. | | | | | Parties may be concerned about the costs of installing meters. | | Parties should obtain estimates of metering costs before agreeing to install meters.  Selecting the wording option “reasonable endeavours” may mean that parties will not be bound to install metering if it will result in significant costs and/or disruption to operations. | |

## 6 Comfort

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| **PRESENCE TEST** | | **FURTHER INSTRUCTION** | |  |
| Does the lease enable the parties to manage comfort rather than temperature? | | Ways the lease does this could be through:   * cooperation between the parties to achieve comfort * complaints monitoring. * programming of the building management system to maximise efficient supply of air-conditioning | |  |
| **“Air conditioning in a typical Australian office building is generally  set to target 22.5°C in summer, yet this temperature setpoint is well  below comfort standards which recommend a range from 23 to 26°C.  Research shows:**   * up to 10% savings are possible with every 1° the setpoint is raised. * roughly one third of summertime air conditioning complaints are because it’s  too cold inside.”1 | | | |  |
| **SAMPLE CLAUSES** |  | |  | |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| none noted | 1.1 Comfort   1. The Landlord must ensure that the Premises are safe, lit and comfortable for office use in relation to lighting, temperature, and air quality during the [#Building Hours/insert hours the building is open for use without key access#]. 2. The Landlord [#will/use its reasonable endeavours to#] ensure that it: 3. programmes the building management system to maximise the efficient supply of air-conditioning to the Premises; and 4. flexible temperature ranges that are wider than the standard 21.5 degrees +/- 1 degree; 5. changes the winter and summer settings for the building air-conditioning based on the external temperatures rather than on dates; and 6. establish a method of receiving feedback from building tenants in relation to the air-conditioning and consider that feedback. 7. The Landlord and the Tenant will meet annually to discuss the performance of the air-conditioning. | none noted | none noted |

1. Src: Buildings Alive (2011). Turn it up...it’s getting hot out there. Retrieved from website:  
 <http://www.buildingsalive.com/news/turn-it-up-its-getting-hot-out-there/>

# Compliance and Costs

## 1 Dispute Resolution

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| **OVERVIEW** | |  | |  |
| Dispute resolution clauses dictate the consequences for failure to achieve green lease provisions. These can be placed in a schedule with specific clauses, be made to apply only to specific clauses or applied to the lease as a whole.  How parties use dispute clauses will vary depending on the importance that the other party places on meeting the obligations outlined in the related clauses.  These clauses are not part of teh BBP leasing standard however this series of dispute clauses have been provided to show some of the types of clauses that may be used. | |  | |  |
| **SAMPLE CLAUSES** |  | |  | |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| none noted | 1.1 No breach of the Lease  A breach of [clauses [insert clause numbers] / this schedule] will not constitute a breach of the Lease. | none noted | none noted |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| none noted | 1.2 Failure of parties to meet obligations   1. If a party fails to meet an obligation under [clauses [insert clause numbers] / this schedule], a party may deliver to the other a Notice outlining the nature of the failure and a time period within which it must be rectified. 2. If the failure is not rectified within the time period stated under the Notice, the party may issue a second Notice requiring that the parties meet within [insert #] days to agree on a plan to rectify the failure (Remedial Plan).   [Drafting note – most Leases contain their own dispute resolution clauses. This clause allows a party to refer to the dispute resolution clause in the Lease or use the drafting provided in clauses 1.3]   1. if the parties fail to agree a Remedial Plan or fail to meet in accordance with clause 1.2(b), either party may [refer the matter for resolution in accordance with clause [insert clause number] / refer the matter to an expert agreed by the parties or, failing agreement of the parties, an expert appointed or recommended by the Institute of Arbitrators and Mediators Australia (Expert).] | none noted | none noted |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| none noted | 1.3 Expert determination - non-binding  The parties agree that the Expert:   1. acts as an expert and not as an arbitrator; and 2. may decide on the rules of conduct and enquire into the dispute as the Expert thinks fit, including hearing representations and taking advice from people the Expert considers appropriate; and 3. must give written reasons for its decision.   OR  **1.3 Expert determination - binding within threshold**   1. The parties agree that the Expert’s decision will be final and binding on the parties except: 2. in the case of manifest error or law; or 3. where:    * + - 1. the monetary amount claimed by a party or determined by the Expert is more than $[insert amount];          2. the determination concerns a matter other than a monetary amount. 4. If the decision of the Expert is not binding in accordance with clause 1.3 then [insert possible further action including the ability for a party to commence court proceedings]. | none noted | none noted |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| none noted | 1.4 Costs of Expert determination  The parties will bear their own costs in connection with expert determination. | none noted | none noted |

## 2 Assignment

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| **OVERVIEW** | |  | |  |
| Some of the green lease clauses may be personal commitments between the parties that sign the lease. If the lease is ever transferred it may be necessary to ensure that the incoming tenant commits to the green lease clauses.  These clauses are not part of the BBP leasing standard however this series of clauses have been provided with the aim of facilitating and clarifying the compliance of the BBP leasing standard clauses. | |  | |  |
| **SAMPLE CLAUSES** |  | |  | |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| none noted | 1.1 Assignment  If the Tenant assigns or transfers this Lease then, the Tenant [must / will encourage] the assignee or transferee to enter into a deed with the Landlord in which the assignee or transferee agrees to comply with [clauses [insert clause numbers] / this Schedule]. | none noted | none noted |

## 3 Rent Review

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| **OVERVIEW** | |  | |  |
| Rent review clauses typically include a list of factors that may be taken into account when the rent of a building or premises is reviewed.  This list may include factors that relate to the environmental performance of the building or premises.  These clauses are not part of the BBP leasing standard however this series of clauses have been provided with the aim of facilitating and clarifying the compliance of the BBP leasing standard clauses. | |  | |  |
| **SAMPLE CLAUSES** |  | |  | |

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| NOTES | CLAUSE | CONCERN/RISK | MITIGATION |
| none noted | 1.1 Factors to be taken into account   1. Whether a party has achieved a Target NABERS Rating during the Term and how long it has been maintained for during the Term; 2. Whether a party has achieved a NABERS Rating higher than a Target NABERS Rating during the Term and how long it has been maintained for during the Term. | none noted | none noted |