



climate change and  
sustainable development



Herbert Smith

# French "Green Lease": model form and example clauses

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## INTRODUCTION

### **A French "green lease"**

With the French Parliament's passage of the "Grenelle I" (domestic environmental summit) legal rules and the coming "Grenelle II" rules, the country's building industry is entering new territory in its dealings with sustainable development issues.

However, implementing a sustainable development policy would be futile if it was limited to the design and construction of buildings.

Sustainable development policies will only be proved effective if owners can incorporate them into building operations and the use of buildings by their occupants.

The lease agreement is the obvious legal starting point to enable investors and users to work together toward reaching this goal.

Although the provisions introduced by the Grenelle rules will evidently influence the contractual relationships between French landlords and tenants, for the most part these parties are free to set their own contractual agenda insofar as the law will not impose each and every clause.

As a result, we have drawn on experiences collected abroad through the Herbert Smith Climate Change and Sustainable Development group (C2SD) to develop a "green lease" *à la française* including model form and example clauses.

### **How to use this document**

The model form and example clauses set out below are intended for use in addition to the other clauses typically found in a French commercial lease (rent, works, charges, consultation of an expert, etc.). Some can be substituted for these clauses; others can be inserted as they stand into a new lease (the environmental objectives, for example). We have opted to present the clauses outside the overall context of a commercial lease in order to make this document more readable and to focus on the specific features of a green lease.

Given the innovative and evolving nature of the material, this lease is not strictly speaking "off the shelf". It is intended to be used as a toolbox and starting point for developing leases, in accordance with individual projects and objectives, to fit the specific needs expressed by investors and by users.

It is therefore more a working document than a model form contract.

This is why the clauses on sharing costs and benefits are examples and not model form clauses.

Although the document does present certain options and alternatives, as a whole it should be considered as a collection of options that may be used to tone up or tone down the green factor of the relationship between landlord and tenant as required.

Nevertheless, this document offers a structural frame around which the main innovations of a green lease are organised: informing tenants and raising tenant awareness, setting environmental performance objectives to be achieved, making commitments to work towards those objectives, setting the terms for following up on and monitoring observance of the objectives or setting financial incentives to encourage achievement of objectives.

Happy reading!

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## **DEFINITIONS**

- Lease: a French commercial lease agreement
- Building: the property in which the Premises are located
- Premises: the part of the Building that is subject to the Lease

## **RECITALS: IMPROVEMENT OF THE ENVIRONMENTAL PERFORMANCE OF THE BUILDING AND THE PREMISES**

The Landlord and the Tenant undertake to implement all necessary measures to improve the technical facilities of the Building and the Premises and the way in which they are operated and used from an environmental perspective, focusing in particular on the following areas:

- the integration of the Building into its environment, by promoting greener modes of transport, ensuring that the Building fits into its surroundings, preventing air, noise and visual pollution and protecting biodiversity;
- limiting nuisances caused by any works or actions undertaken in the Building (waste management, limiting nuisances and pollution);
- controlling energy, by limiting the loss of energy in connection with the technical facilities of the Building, reducing the consumption of energy for heating, cooling, lighting, hot water, ventilation and other operating systems and promoting the use of renewable energy sources with a view to limiting greenhouse gas emissions;
- limiting the consumption of potable water;
- rainwater management;
- waste management;
- the well-being of the occupants from temperature/humidity, acoustic, visual and olfactory perspectives;
- the sanitary quality of the environment, air and water.

The Parties agree to ensure that their undertakings in the above-listed areas are shared by all persons with whom they may enter into contracts for the management of the Building and the occupancy of the Premises, particularly by the Building manager, cleaning and maintenance companies, companies carrying out works, sub-tenants and all other occupants of the Building in any capacity.

## 1. ENVIRONMENTAL FEATURES OF THE BUILDING

### 1.1 Regulated Features

#### 1.1.1 Energy performance and certification

The Building was built on [date] and [if applicable] extensively renovated on [date].

The Building was constructed in accordance with the applicable energy performance regulations on the date on which the application for planning permission was filed, namely "RT 2005", the energy performance regulations in force in France in 2005 [clause to be adapted depending on the date of construction or extensive renovation of the Building] and complies with the energy performance standards applicable to building shells and their component parts, as provided under the regulations. The Landlord received the HPE (*Haute Performance Energétique* – High Energy Performance) certification from CERTIVEA pursuant to the conditions defined in the Ministerial Order of 8 May 2007 [to be adapted depending on the energy performance level achieved by the Building in terms of the regulations (HPE, HPE EnR, THPE, THPE EnR BBC, BEPOS)]. A copy of the certification is appended hereto.

An energy performance survey of the Building was undertaken by [name of assessor] using the [to be completed depending on the type of building] system on construction pursuant to the conditions defined in Articles L. 134-1 *et seq.* of the French Building and Housing Code (*Code de la construction et de l'habitation*) [to be adapted depending on the actual situation: currently, a survey must be carried out for all new buildings or extensions of existing buildings when sold or leased and if used for residential purposes; the proposed "Grenelle 2" law would make it mandatory for landlords to provide energy performance surveys to tenants when entering into a commercial lease]. The Building is rated [to be completed] for energy efficiency and greenhouse gas emissions. A copy of the energy performance survey including advice and recommendations from the assessor is appended hereto.

#### 1.1.2 (Other regulations: pending)

#### 1.1.3 Exposure to natural and technological risks

The Landlord has provided the Tenant with a report on natural and technological risks (*état des risques naturels et technologiques*) as defined in Article L. 125-5 of the French Environment Code (*Code de l'environnement*). A copy of this report is appended hereto [NB: the proposed "Grenelle 2" law provides that the report on natural and technological risks provided by the landlord must be appended to those commercial leases referred to in Articles L. 145-1 and L. 145-2 of the French Commercial Code].

## 1.2 Certifications

### - "NF Bâtiments Tertiaires - Démarche HQE ®"

[Example for a building that has already been certified:]

The Building was certified in accordance with "NF Bâtiments Tertiaires - Démarche HQE ®" by CERTIVEA for its construction (or for the extensive renovation works carried out on [date]). The benchmark used for the certification was the "2006" benchmark. The certification decision is numbered NF/380/09/XXX.

It was issued on [date] [programme], [date] design and [date] completion.

The environmental profile of the Building taken into account for the HQE certification was as follows:

	Very efficient	Efficient	Basic
<b>ECO-CONSTRUCTION</b>			
1. Relationship of the Building with its immediate surroundings			
2. Integrated choice of construction products, systems and processes			
3. Construction site with low environmental impact			
<b>ECO-MANAGEMENT</b>			
4. Energy			
5. Water			
6. Waste			
7. Maintenance-sustainability of environmental performance			
<b>WELL-BEING</b>			
8. Temperature/humidity			
9. Noise			
10. Visual			
11. Olfactory			
<b>HEALTH</b>			
12. Sanitary quality of the environment			
13. Sanitary quality of the air			
14. Sanitary quality of the water			

### - "NF Bâtiments Tertiaires en exploitation - Démarche HQE ®"

[to be completed, using the same model]

## 2. ENVIRONMENTAL USER GUIDE

In the interest of informing the Tenant about the means available to it in terms of achieving the target environmental performance, the Landlord gave the Tenant, prior to the signature date of the Lease, a user guide to the Premises focusing on environmental performance (the "Environmental User Guide") that defines the rules to be taken into account for fitting out and occupying the Premises and for using any common areas and collective facilities in the Building.

The Environmental User Guide includes:

- the minimum criteria to be taken into account to ensure that fit-out works undertaken at the Premises are consistent with the design of the Building and example fittings to assist tenants with their works, which must correspond to their needs and support the optimal environmental performance of the Building and the well-being of its occupants;
- information on obtaining materials from sustainable sources for use in fit-out works;
- solutions to minimise the direct environmental impact of the occupancy of the Premises in terms of the consumption of resources and of the production of waste and carbon emissions (for example, by setting up recycling programmes or transport plans, using renewable energy sources, energy efficient equipment or recycled consumables);
- information on market standards (particularly in terms of energy efficiency and renewable energy) to help the Tenant make decisions;
- information on how the Landlord can help the Tenant to meet environmental performance objectives;
- information on the accreditations or certifications obtained by the Landlord for the Building or that it plans to obtain in terms of environmental performance;
- information on the certifications or accreditations that the Tenant could or must obtain in terms of environmental performance;
- information on the environmental performance of the Building that may be used by the Tenant in its communication documents.

The Landlord reserves the right to update, add to or modify the Environmental User Guide at any time during the period of occupancy of the Premises.

[ALTERNATIVE:

After consultation with / Subject to the approval of the Steering and Environment Follow-up Committee defined in Article 5-1].

### **3. ENVIRONMENTAL PERFORMANCE OBJECTIVES**

The Landlord and the Tenant agree to meet, at [insert date], and maintain throughout the duration of the Lease the following objectives (the "Environmental Objectives") pertaining to the Building and/or for the Premises.

[ALTERNATIVE:

The Landlord and the Tenant agree to meet and maintain the following objectives (the "Environmental Objectives") pertaining to the Building and/or for the Premises, according to the timeframes set out below.]

#### **3.1 General Objectives**

In the interest of maintaining a comfortable indoor environment, which is beneficial for the productivity, health and well-being of its occupants, is efficient in its consumption of energy and natural resources and is environmentally friendly, the Landlord and the Tenant undertake to meet the following objectives:

- (i) the consistency of the occupancy of the Premises and the operation of the Building with its design and/or construction if the design and/or construction of the Building took into account environmental performance;
- (ii) a reduction in energy use, including more efficient use of heating and lighting, and reduced production of greenhouse gases;
- (iii) a reduction in the use of air conditioning and greater use of natural ventilation;
- (iv) a reduction in the use of potable water and greater use of recycled water or rainwater where appropriate;
- (v) a reduction in the production of waste and the optimisation of waste processing with better use of selective sorting and recycling and effective diversion of waste generated by works undertaken in the Building or in the Premises from landfill disposal: construction, fit-out, demolition, removal of fixtures or fittings;
- (vi) the replacement of polluting products by environmentally friendly products, particularly the use of non-polluting cleaning products, certified where possible in accordance with ecological standards;
- (vii) the promotion of alternative means of transport for users of the Building and any visitors;
- (viii) the avoidance of materials and furniture containing a high level of Volatile Organic Compounds ("VOC") and the reduction of the VOC content of the Building and the Premises.

### **3.2 Certifications and Accreditations**

#### **a) Certifications and Accreditations of the Landlord**

The Landlord has obtained the following accreditations and certifications and undertakes to maintain them for the duration of the Lease:

- [--]
- [--]

[OPTION: The Landlord undertakes to obtain the following certifications and accreditations and, once obtained, to maintain them for the duration of the Lease:

- [--]
- [--]
- ISO 14001 certification for the management of the Building].

The Landlord is entitled to attempt at any time during the term of the Lease to obtain any other certifications or accreditations for the Building:

- (i) that the Landlord deems necessary to ensure that the Building remains in compliance with current regulations or to reflect any improvements made in terms of environmental performance;
- (ii) or that constitute market standards;
- (iii) or that the Landlord deems necessary to meet requests from current or future tenants.

#### **b) Certifications and Accreditations of the Tenant**

The Tenant has obtained the following certifications and accreditations and undertakes to maintain them for the duration of the Lease:

- [--]
- [--]

[OPTION: The Tenant undertakes to obtain the following certifications and accreditations and, once obtained, to maintain them for the duration of the Lease:

- [--]
- [--]

The Tenant is entitled to attempt at any time during the term of the Lease to obtain any other certifications or accreditations for the Building:

- (i) that the Tenant deems necessary to ensure that the Building remains in compliance with current regulations or to reflect any improvements made in terms of environmental performance;
- (ii) or that constitute market standards.

[ALTERNATIVE:

**a) Certification objectives pertaining to the Building**

The Parties agree to use their best endeavours to enable the Building to achieve a certification in accordance with the [--] standard within [--].

The Landlord will hold the certification. The Tenant must cooperate in full with the Landlord's application.

The Parties agree to apply the following timetable for the purposes of obtaining the certification of the Building on the date set in the first paragraph [to be completed].

Moreover, the Landlord is entitled at any time during the Lease to obtain any other certifications or accreditations for the Building:

- (i) that the Landlord deems necessary to ensure that the Building remains in compliance with current regulations or to reflect any improvements made in terms of environmental performance;
- (ii) or that constitute market standards;
- (iii) or that the Landlord deems necessary to meet requests from current or future tenants.

**b) Certification objectives pertaining to the Parties' businesses**

(A) Certification of the Landlord's business

The Landlord has obtained the following accreditations and certifications:

[ALTERNATIVE: the Landlord undertakes to obtain the following accreditations and certifications and, once obtained, to maintain them for the duration of the Lease:]

- ISO 14001 for the environmental management system of the Building (or of its buildings), dated [--];

The Landlord undertakes/will undertake to renew this certification as necessary for the duration of the Lease.

(B) Certification of the Tenant's business

The Tenant has obtained the following accreditations and certifications:

[ALTERNATIVE: the Tenant undertakes to obtain the following accreditations and certifications and, once obtained, to maintain them for the duration of the Lease:]

- ISO 14001 for the environmental management system of [to be completed], dated [--];

The Tenant undertakes/will undertake to renew this certification as necessary for the duration of the Lease.

### 3.3 Specific Objectives

In addition to the provisions of Articles 3.1 and 3.2 above, the Landlord and the Tenant hereby agree to meet and maintain the following specific objectives pertaining to the Building and to the Premises:

- (i) to ensure that the consumption of electricity does not exceed [--] kilowatt hours per square metre of the usable surface area of the Building per year (KWh/m<sup>2</sup>/year);
- (ii) to ensure that the consumption of natural gas does not exceed [--] cubic metres per square metre of the usable surface area of the Building per year (m<sup>3</sup>/m<sup>2</sup>/year);

The consumption objectives set out above are expressed in final energy [ALTERNATIVE: in primary energy].

- (iii) to ensure that the consumption of potable water does not exceed [--] litres per square metre of the usable surface area of the Building per year (l/m<sup>2</sup>/year);
- (iv) to ensure that the proportion of waste from the Building that is recycled amounts to at least [--] % per year; [to be adapted depending on the business activities carried out in the Building]
- (v) to ensure that the concentration of carbon dioxide inside the Building does not exceed the concentration of carbon dioxide outside by more than [--] Parts Per Million (PPM) measured in compliance with standard 62.1-2007 of the American Society of Heating, Refrigerating and Air-Conditioning Engineers ("ASHRAE") or any other equivalent standard.

### 3.4 Adaptation of the Environmental Objectives

OPTION 1:

The Landlord is entitled to (i) adjust the Environmental Objectives depending on the type of occupancy and the degree of usage of the Premises and on the occupants the Building and their needs in terms of energy and natural resources; (ii) to standardise the specific objectives of the Building with respect to the tenants and occupants of the Building and their needs in terms of energy and natural resources and any alterations to the occupancy or energy consumption of the different areas of the Building, including underground parking areas (if applicable), collective restaurant services (if applicable) and any other common areas.

[ALTERNATIVE (In the event that obtaining or maintaining a certification or accreditation is not one of the Environmental Objectives):

Furthermore, the Landlord is entitled to modify the Environmental Objectives to make them compatible with any objectives that may be defined as part of the certification of the Building by a third party organisation or a rating system such as HQE, BREEAM, LEED EBOM, Energy Star, etc. or with any objectives that may be defined to obtain a label or certification that is specific to the real estate industry and may or may not be mandatory.]

## OPTION 2:

If the use of the Premises were to change, if extensive works were to be undertaken or if the target certification or accreditation were to be modified or discontinued, the Parties agree to adjust the Environment Objectives and to entrust the Expert defined in Article 5.2 with determining how any such adjustments should be made.

If an Environmental Objective is to be reduced in scope, an audit must first be carried out and the reasons for the non-conformity identified, along with a plan to rectify and improve the situation, where possible.

Any costs incurred as a result of this adjustment process will be shared by the Landlord and the Tenant [ALTERNATIVE: will be borne by the responsible party, as identified by the Expert].

An Environment Objective may only be reduced in scope where it cannot be met even when both Parties fulfil their obligations.

If an Environmental Objective is to be increased in scope, the Party requesting the adjustment must provide reasons as to why a more ambitious Environmental Objective should be set.

### **3.5 Regulatory Standards**

If a regulation were to be introduced that would oblige either of the Parties to meet environmental performance objectives that are more restrictive than the Environmental Objectives, particularly in terms of energy consumption or the use of natural resources, the Parties agree that these objectives will automatically replace the Environmental Objectives. Accordingly, the Landlord will be entitled to make any amendments as may be necessary to the Lease in order to meet the objectives defined in the regulations.

## **4. IMPLEMENTATION OF THE OBJECTIVES – OBLIGATIONS OF THE PARTIES**

### **4.1 Implementation of Systems to Measure and Test Consumption**

[OPTION: The Landlord undertakes to install smart metering technology that allows the consumption of electricity, gas and water to be measured every [--] minute(s)/hour(s) for each individual Premises and for the collective facilities of the Building.]

[In addition,] the Landlord is entitled at any time and from time to time to measure and test the quantity of greenhouse gases produced by any energy production equipment using fossil fuels that may be installed in the Building, including inside the Premises, on reasonable notice to the Tenant and accompanied by a representative of the Tenant if required.

The Landlord may carry out VOC measurements in the Premises from time to time.

The Landlord may carry out indoor air quality tests in the Premises from time to time. These tests will cover all or some of the relevant parameters that were identified in relation to the occupancy of the Premises by an organisation measuring indoor air quality.

## **4.2 Data Sharing and Collecting Information**

The Parties agree to share with each other all data and relevant information they have or may obtain in the future in relation to the Building and the Premises (in as much detail as is available to them) in respect of:

- electricity consumption,
- gas consumption,
- the consumption of any other type of energy source,
- water consumption,
- waste generation, management and recycling,
- maintenance of production or distribution equipment used in connection with any of the energy sources used, water and/or waste management (the "Equipment"),
- indoor air quality.

Such data and relevant information will be provided [monthly] as a minimum in a format or according to a methodology to be determined by the Landlord [ALTERNATIVE: the Parties / the Steering and Environmental Follow-up Committee defined in Article 5.1] at a later date and, where necessary, adjusted with a view to obtaining data that can be used with the highest degree of efficiency.

The methodology selected by the Landlord [ALTERNATIVE: the Parties/the Steering and Environmental Follow-up Committee defined in Article 5.1] must synthesise all of the data and information collected (e.g.: IPD Environment Code, Upstream Benchmark, etc.).

The Parties undertake to keep the data and information disclosed under this provision confidential.

## **4.3 Annual Environmental Review**

Once a year, the Landlord will select an independent and qualified auditor to undertake, at the expense of the Tenant, an environmental audit of the Premises and the common areas of the Building, taking into account the following issues as a minimum: water, indoor air, waste, polluting products, energy, greenhouse gas emissions [to be completed].

## **4.4 Annual Report on Environmental Performance**

The Landlord will order an annual report on the environmental performance of the Building and the Premises containing the results of the environmental audit and measurements, a review of the progress made in terms of meeting objectives and the strategies to be employed over the next year.

The report will be submitted to the Steering and Environmental Follow-up Committee defined in Article 5.

## **4.5 Fit-Out or Improvement Works**

The Tenant undertakes to take into account the minimum criteria defined in the Environmental User Guide when carrying out any fit-out or improvement works and must inform the Landlord with notice of at least 15 calendar days before undertaking any works, including the details thereof.

The Landlord is entitled to demand that the Tenant abide by certain criteria governing the fit-out of the Premises defined in the Environmental User Guide should it deem the Tenant's projects detrimental to the environmental performance of the Premises or the Building or that they would prevent the Landlord from obtaining or retaining its accreditations or certifications in terms of environmental performance [ALTERNATIVE: to breach the Environmental Objectives].

Notwithstanding the above, the Tenant must ensure that all paints, sealants and adhesives used or to be used within the Premises meet [EcoLogo™, Green Seal™] or equivalent standards in order to prevent or reduce VOC emissions in the Building and in the Premises.

The Tenant must have regard to the procurement recommendations set out in the Environmental User Guide when purchasing any furniture, fixtures, materials or cleaning products and equipment to be used in the Premises.

The Tenant must use recycled materials where possible for any fit-out or alteration works that may be carried out in the Premises provided that they are authorised by the Environmental User Guide or approved by the Landlord. The Tenant must consider local procurement sources if compatible with the works it is carrying out and with the provisions of the Environmental User Guide.

The Tenant undertakes to recycle or to instruct its contractors to recycle where possible any waste produced by the demolition of existing building components when carrying out fit-out or improvement works in the Premises in order to minimise the amount of waste sent for landfill disposal. The Landlord reserves the right to monitor and measure the amount of waste leaving the Premises to be sent for landfill disposal. Where possible, the Landlord agrees to provide the Tenant with a staging area for the sorting and recycling of materials during construction.

Prior to carrying out any works whatsoever, the Tenant must ensure that:

- its contractors follow any best practices relating to air quality;
- the filtration media used for any air filtration that may be required has the highest possible efficiency reporting value and that they are replaced before any new occupant enters the Premises;
- all paints meet [--] standard or any equivalent standard applicable in France; all carpets meet [--] standard; and all fabrics comply with the requirements of [--] or any other equivalent standard applicable in France.

#### **4.6 Cleaning**

The Tenant must ensure that any cleaning contracts it may conclude for the Premises stipulate that all cleaning products used must meet [--] standard or any equivalent standard and that waste must be sorted and recycled where possible.

The Tenant must ensure that any contracts concluded with cleaning companies stipulate that their personnel must comply with the provisions of this Lease in connection with the cleaning of the Premises. In particular, any contracts concluded by the Tenant in respect of specialised environmental facilities, such as waterless urinals, must set out the appropriate cleaning and maintenance procedures for these facilities and provide that cleaning personnel are to be informed of such procedures.

The Tenant must require its service providers to comply with the waste management programme and any programmes for the reduction of energy or water consumption that may be agreed upon between the Parties.

Prior to undertaking any works whatsoever, the Tenant must ensure that:

- the cleaning contractors meet the [--] standard or any other standard applicable in France;
- the contractors reduce their lighting use to a level 15% lower than that authorised by the [--] standard issued by [--].

The Tenant must schedule cleaning times with a view to minimising the use of lighting, heating and air conditioning.

It undertakes to inform and offer practical training to those persons responsible for cleaning the Premises.

#### **4.7 Mandatory Works**

[for older buildings]

The Parties are fully and completely aware of the laws and regulations currently under debate that would require works for the improvement of energy performance to be carried out in all buildings used for tertiary purposes, including the Building, within eight years as from 1 January 2012 and according to the conditions defined in the regulations.

#### **4.8 Building Management**

[OPTION: In the event that this is not an Environmental Objective: The Landlord undertakes to obtain ISO 14001 certification for the management of the Building].

The Landlord [further] undertakes to manage and maintain the Building facilities in accordance with market best practices and manufacturer recommendations.

#### **4.9 Reduction of Direct and Indirect Energy Consumption and Greenhouse Gas Emissions**

All electrical equipment to be installed in the Building or the Premises will be installed by the manufacturer in accordance with the [--] standard.

The Tenant must prioritise the acquisition of equipment for the Premises that have achieved [--] certification, provided that such certification exists for the equipment in question and where the financial conditions would be largely identical or would not involve a surcharge exceeding [--]%.

The Tenant must make every endeavour to reduce the consumption of electricity in the Premises by implementing energy saving methods (e.g. reducing unnecessary lighting), using energy efficient equipment, installing movement sensors linked to the lighting system in areas defined in the Environmental User Guide and using the equipment recommended in the Environmental User Guide.

Where appropriate and possible, the Tenant is entitled to request that the electricity it consumes be purchased from renewable sources. In this case, all corresponding expenses, including installation costs, if applicable, will be borne by the Tenant and paid directly to the supplier or reimbursed to the Landlord, if the latter has dealt with the supplier.

Regarding the management of the common areas and collective facilities in the Building, the Landlord must comply with the Environmental Objectives. In addition, it must use its best endeavours to ensure that any other tenants use their premises in accordance with the Environmental Objectives.

Where appropriate and possible, the Landlord will endeavour to purchase energy for the Building from renewable sources. In this case, the corresponding installation costs will be borne by the Landlord; the Tenant will pay the corresponding fuel consumption bills.

The Landlord will encourage the installation of Equipment based on renewable energy sources in the Building or the Premises provided that this would not have an adverse effect on the value, structure or visual appearance of the Building, in the opinion of the Landlord.

Where possible, the Landlord undertakes to take part in programmes for the production and supply of renewable energy.

#### **4.10 Reduction of Water Consumption**

The Landlord and the Tenant undertake to install a high efficiency plumbing system and control technologies in the Building and the Premises if construction work is to be carried out.

The Landlord and the Tenant undertake to implement a regular programme of leak inspections in the Building and the Premises.

The Landlord and the Tenant undertake to use water saving control systems.

[ALTERNATIVE: The Tenant agrees to install, at its expense, a water meter or water saving control system.]

Where using potable water is not a necessity, the Tenant agrees to use treated or recycled water, particularly for the toilet facilities in the Building.

The Tenant agrees to use water efficient equipment, such as waterless urinals or any other equipment consistent with the Environmental Objectives.

The Tenant must ensure that all equipment acquired for use in the Premises is certified by [--] or a French equivalent.

[OPTION: The Tenant agrees to limit the average annual consumption of water in the Premises to [--] litres of water per square metre of usable surface area.]

#### **4.11 Waste**

The Landlord is entitled to refuse (i) to collect waste from the Premises or (ii) to allow waste from the Premises to be stored in the areas provided for this purpose if it is not sorted into the appropriate recycling container.

In coordination with the Tenant and any other occupants of the Building, the Landlord undertakes to develop a waste management programme for the Building including, as appropriate, sharing recycling and waste management facilities between the occupants and implementing a joint waste strategy with neighbouring buildings.

The Tenant undertakes to implement strategies to recycle toner cartridges, fluorescent light bulbs, batteries and similar materials.

The Tenant undertakes to adopt sustainable procurement codes (e.g. purchasing environmentally friendly office consumables and re-using non-perishable redundant materials).

In terms of procurement and equipment, the Tenant undertakes to prioritise contractors with suitable policies on waste management, recycling supplies and re-using non-perishable redundant materials.

#### **4.12 Alterations and Replacements**

When making any alterations to the Premises, the Tenant undertakes to prioritise the use of sustainable procurement sources, renewable energy sources and sustainable products and materials and to consider recycling, environmental performance and the impact of the replacement of the Equipment.

When replacing the Equipment, the Landlord undertakes to prioritise the use of energy efficient Equipment and to consider how to reduce energy consumption and improve energy rankings.

The Tenant undertakes to refrain from carrying out any alterations to the Premise that could have an adverse effect on the environmental performance of the Building or the Premises.

When submitting a request for the prior approval of alterations at least [15] calendar days in advance, the Tenant undertakes to provide the Landlord with sufficient information as to the environmental impact of the planned works.

The Parties will endeavour to make alterations that reduce air conditioning requirements and overall energy consumption.

The Parties agree to set an environmental performance ranking target prior to the completion by either Party of works for which a certification or accreditation for environmental performance is available.

#### **4.13 Transport**

The Landlord undertakes to provide space for bicycle storage racks, shower and changing facilities for cyclists and spaces for small cars [or] mopeds [or] motorbikes].

The Landlord undertakes to establish shuttle links to local public transport hubs.

The Parties agree to develop a "green travel plan".

#### **4.14 Information and Training**

Without breaching the confidentiality of information as required by Article 4.2, the Parties will be free to share with others their targets and achievements under this Lease.

The Landlord will organise workshops for the Tenant and other occupants on sustainability initiatives to demonstrate how reductions and savings to energy, water and waste consumption can be made.

The Tenant undertakes to offer practical and theoretical training to its employees and to communicate their achievements.

#### **4.15 Certifications and Accreditations (if these are an Environmental Objective)**

The Landlord will make every endeavour to cooperate with the Tenant with a view to the certification or the accreditation of the Premises in accordance with current standards such as [--] or any equivalent standard selected in agreement with the Landlord. The costs of obtaining any such certification or accreditation will be borne by the Tenant.

The Tenant agrees to disclose any information that may be asked of it by the Landlord in connection with the certifications or accreditations provided for in this Lease in a format selected in agreement with the Landlord and within [15] calendar days.

When obtaining a certification or an accreditation, the ranking that the Landlord must achieve under such accreditation or certification will be set with respect to the optimal performance of the Building (or with respect to the improvements made to the Building).

The Tenant acknowledges that the Landlord is entitled to operate, manage and maintain the Building in such a way as to retain the accreditations or certifications that are obtained and to enable the Landlord to obtain any further accreditations or certifications that may be sought under the provisions of this Lease. The Tenant therefore agrees to any constraints that retaining the accreditations or certifications may impose on the operation of the Building or the use of the Premises.

In the event that the Building is managed by a contractor on behalf of the Landlord, the Landlord undertakes to ensure that the actions of its contractors do not prevent the Landlord from retaining any certifications and accreditations that it may have obtained or prevent the Landlord and/or the Tenant from obtaining any new certifications or accreditations.

When obtaining a certification or an accreditation, the ranking that the Tenant must achieve under such accreditation or certification will be set with respect to the optimal performance of the Building and/or the Premises (or with respect to the improvements made to the Building and/or the Premises).

The Landlord acknowledges that the Tenant is entitled to expect the Landlord to operate, manage and maintain the Building in such a way that the Tenant is able to retain any certifications or accreditations obtained and that it may obtain any new accreditations or certifications sought under the provisions of this Lease. The Landlord therefore agrees to any constraints that retaining the accreditations or certifications of the Tenant may impose on the operation of the Building, provided that such constraints are compatible with the use of the Building by its other occupants.

#### **4.16 Outdoor Environment**

[To be completed]

#### **4.17 Building Management System**

- (i) Where the Landlord controls the hours of operation of any heating, lighting or air conditioning services to the Building and/or the Premises, the Tenant will provide to the Landlord details of its hours of occupancy of the Premises and its requirements for heating, lighting and air conditioning services for the Premises and will keep the Landlord informed of any changes in such requirements.
- (ii) Where a Building Management System exists for the Building, the Landlord will:
  - (a) where appropriate, explain to the Tenant how the system works and provide training for the personnel of the Tenant or of its service providers;
  - (b) ensure that, wherever practicable, the settings of the system are adjusted and regularly reviewed with a view to minimising unnecessary provision of heating, lighting or air conditioning services to the Building and the Premises and to reflect the information provided by the Tenant under paragraph (i) above.

### **5. FOLLOW-UP ON OBLIGATIONS AND RESOLUTION OF DIFFICULTIES**

#### **5.1 The Steering and Environmental Follow-up Committee for the Building (hereinafter the "Committee")**

The Parties will establish a Committee that will meet [on an ad hoc basis].

The Committee will comprise representatives of the Landlord, the Tenant, any managing agent employed by the Landlord, any company entrusted with cleaning and/or maintenance used by the Landlord or Tenant, or any other person involved from time to time in the operation or management of the Building and the Premises as the Parties deem appropriate.

[TO BE ADAPTED BASED ON THE PREROGATIVES THAT ARE GRANTED TO THE COMMITTEE IN OTHER CONTRACT PROVISIONS] The Committee will:

(a) study:

- the data and information shared by the Parties under Article 4.2;
- the overall environmental performance of the Building;
- any alterations to the Building, the Premises or operation thereof that may affect the environmental performance of the Building or the Premises;
- any forthcoming changes in law or practice that may be relevant to improving the environmental performance of the Building and the Premises.

(b) adapt the Environmental Objectives regarding:

- the reduction of energy consumption, carbon emissions, water consumption and waste at the Building and the Premises;
- the increase, where possible, in the use of Equipment based on green technologies, renewable energy sources, recycling of waste, use of treated water and captured rainwater for the Building and the Premises;

- other measures that it may be practical to adopt in order to improve the environmental performance of the Building and the Premises.

(c) produce an annual report, which:

- contains a summary of the energy and water consumption and the waste generated by the Building and the Premises;
- sets out progress towards achieving the targets agreed for previous years and identifies any other achievements (e.g. reductions in fossil fuel consumption);
- sets out the targets to be reached.

The Parties will provide each other with the contact details of the person(s) within their organisations and in any service providers responsible for management, cleaning or maintenance who should be contacted on issues relating to the environmental performance of the Building or the Premises.

## **5.2 Dispute Resolution**

The Landlord and the Tenant agree to submit to an expert (the "Expert"), prior to bringing any legal proceedings, any technical difficulties encountered in seeking to achieve the Environmental Objectives and meet the obligations made for that purpose. The Expert must seek out the reasons for which the Building or the Premises, as the case may be, did not achieve the objectives as planned or for which the obligations made – if met – did not enable the objectives to be achieved. The Expert must give an opinion on the division of responsibility for such substandard performance, make recommendations for improving performance and reaching the objectives or on the deadline and possibly the conditions for the failing party to remedy non-performance of its obligation.

The Parties agree to comply with the recommendations of the Expert.

Fees and costs for the Expert's task will be borne by the Party to which the Expert has attributed the difficulty.

The Expert will be appointed [to be completed].

## **6. EXAMPLE CLAUSES ON SHARING COSTS AND BENEFITS – FINANCIAL INCENTIVE**

### **6.1 Triple Net Rent**

As part of the service charges, the Tenant will bear all costs incurred for efforts to improve environmental performance and will enjoy any and all resulting savings.

### **6.2 Net Rent and Adjustable Charges**

A projected budget will be established for charges that are dependant on environmental performance.

At the end of each [--], a statement of charges covered under the projected budget will be prepared and savings or extra costs with respect to the budget will be determined.

In addition, an evaluation of pre-defined environmental performance indicators will be conducted in order to attribute a rank to tenants based on their performance in terms of the defined objectives. Tenants obtaining the best rank (i.e. the best environmental performance) will be granted a higher discount on service charges. Inversely, tenants whose rank is lower will incur additional service charges.

### **6.3 Gross Rent**

The Landlord will commit to a flat amount or maximum limit on all or part of the charges for which the amount depends on environmental performance in consideration for the Tenant's observance of a specific list of conditions for using the Premises and the Building.

### **6.4 Gross Rent and Increase/Decrease in Costs**

A maximum limit on service charges will be established based on observance of a specific list of conditions for the Tenant's use of the Premises and the Building. This limit may only vary in accordance with environmental performance.

At the end of each [--], an evaluation of pre-defined environmental performance indicators will be conducted.

The Landlord and the Tenant will [equally] share any savings made due to good performance with regard to the defined objectives or will [equally] bear the burden of each increase in expenses generated by poor performance with regard to the defined objectives.

### **6.5 Investment Reserve Account**

Any reduction/savings in costs will be paid into a special account held by the Landlord and intended to finance investments to improve the environmental performance of the Building.

The Landlord may also undertake to add to this reserve account.

The Landlord undertakes to have work done to improve the environmental performance of the Building within a timeframe that is compatible with the tenants' term of occupancy.

### **6.6 Exemption from Reinstatement**

If the Tenant has had alterations carried out with a view to improving the environmental performance of the Building and/or the Premises and if the Landlord deems that it will not be necessary to return the Building and/or the Premises to its/their original state at the end of the Lease, the Landlord undertakes to:

- (i) not require reinstatement after Tenant alterations have been made, and

- (ii) not make such Tenant alterations subject to prior consent.

## **6.7 Flexible building use and variable service charges**

[Pending]

## **6.8 Mandatory Works**

[For older buildings]

The Parties agree that the cost of those works referred to in Article 4.7 as well as all adjustment works generally necessary to make the Building and the Premises comply with applicable standards for energy performance, waste management or sustainable development, will be entirely borne by the Tenant which undertakes to make its payments in proportion to the usable surface area of the Premises as compared to the usable surface area of all private premises in the Building, even where said works come under Article 606 of the French Civil Code (*Code Civil*). As regards the regulations referred to below and related consequences, the Tenant will, at its sole expense, respond to any instructions, claims or injunctions from the relevant authorities regarding the its use of the Premises.

## **6.9 Trading Systems for Greenhouse Gas Units**

If the Landlord is subject to a system for trading greenhouse gas units or any equivalent cap and trade system for greenhouse gases:

- (a) The Landlord will be the beneficiary of any tradable units that may be issued, save, if applicable, any units issued exclusively to the Tenant under applicable regulations. [OPTION: the proceeds from the resale of tradable units held by the Landlord or Tenant at the end of each period of reference will be deposited in the reserve account created under Article 6.5];
- (b) If the Landlord must purchase tradable units, the cost of purchasing such units will be included in the operating charges for the Building and recovered in keeping with Article [--] of the Lease. The same will be true of any penalties imposed on the Landlord should it fail to obtain a sufficient number of units.

## **6.10 White Certificates**

VERSION 1: Eligible Party

The Parties agree that if they decide to take action that would cause them to be "eligible" for a white certificate, the benefit of such certificate will be reserved to the Landlord. Any proceeds resulting from the resale of white certificates will be divided between the Parties pro rata to their respective participation in the action that entitled them to the certificate.

[OPTION: Proceeds from the sale of certificates will be deposited in the reserve account created pursuant to Article 6.5].

VERSION 2: Obligated Party

If the Landlord is subject to a white certificate system in its capacity as an "obligated party" and unless the Tenant itself is subject to the white certificate system as an obligated party due to its occupancy of the Premises:

- (i) the Tenant undertakes to freely assign to the Landlord all certificates that it may be issued and that arise from the activities carried out in the Building or on the Premises;
- (ii) if the Landlord is required to acquire certificates or pay penalties, the cost of acquiring the certificates and the penalty amounts will be included in the operating charges for the Building and recovered in accordance with Article [--] of the Lease.

**6.11 Climate-Energy Contribution**

[Pending]

## **7. PENALTY FOR FAILURES TO MEET OBLIGATIONS**

### **7.1 Execution at the Expense of the Defaulting Party**

If one Party does not remedy a failure to perform its obligations undertaken for the purpose of achieving the Environmental Objectives within a predetermined period, the other Party may, after a formal notice has obtained no remedy, have such obligations performed at the expense of the defaulting Party.

### **7.2 Temporary Rent Reduction**

Provided the Tenant fully observes its environmental obligations, the rent will be reduced by a predetermined amount should the Landlord fail to obtain the planned certifications or accreditations and such reduction will apply until the certifications or accreditations have been obtained.