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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: 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 secure and confidential except to the extent necessary: 9. to comply with a Law; or 10. to enable the Parties to perform their roles and obligations under the Lease; 11. as required for any dispute resolution process in this Lease; or 12. 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: 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 |
| 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 |