|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **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. |