

Civil Estate Occupancy Agreement for Crown Bodies

Sharing PFI/PPP Funded Property



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Purpose and Application

- 1.1 This Agreement sets out general arrangements for shared occupations by Crown bodies in office properties. Its purpose is to act as:
 - (i) *a framework agreement which Crown bodies sharing occupation in a freehold/feuhold or leasehold property should normally adopt to establish arrangements between Holders and Occupiers. There may be some differences in specific procedures within Crown bodies, and the terms and conditions may be amended by agreement between parties;* and
 - (ii) the standard terms of occupation where an alternative agreement has not been reached.
- 1.2 **Nothing in this Agreement precludes Crown bodies from negotiating other arrangements to suit particular circumstances.**
- 1.3 This Agreement **does not apply** in respect of shared properties where each Crown body has an individual lease. In these circumstances each lease effectively constitutes a single occupation, and a formal agreement between the Crown bodies is not needed. However, in these circumstances and in accordance with Chapter 4 below, they **should** set up formal liaison arrangements through a House Committee or similar liaison group, in order to:
 - (i) share information and liaise over dealings with the landlord; and
 - (ii) agree responsibilities for the payment and apportionment of rates.
- 1.4 Crown bodies are in a unique position concerning their joint property occupations. The private sector has to operate within a framework of internal value for money disciplines and those imposed by statute. Crown bodies generally operate within this same framework when dealing with the private sector, but cannot resort to law in their property dealings with each other. This is because the Crown is indivisible and one Crown body cannot take legal action against another. This Agreement and its Appendices do not therefore constitute a legal tenancy agreement. However, throughout this Agreement logical disciplines broadly comparable to those imposed by statute on the private sector have been applied to govern Crown bodies' property dealings in shared occupations.

Defining the Holder and the Occupier

- 1.5 The owning Crown body, hereafter referred to as the **Holder**, is defined as the Crown body on whose asset register the property appears (in the case of a freehold/feuhold), or the Crown body which has the legal obligation to pay the rent (in the case of a leasehold). The Holder is normally the Crown body that was responsible for the most floorspace at the beginning of a term of occupation, however, the Holder can be a minor occupier if all occupants so resolve. Arrangements for change of Holder are set out in paragraphs 3.2 and 3.16. In order to comply with government accounting policy the Holder has certain lead responsibilities in respect of a property where occupation is shared.
- 1.6 A Crown body in occupation who is not the Holder is hereafter referred to as an **Occupier**. Shared occupations will involve one or more Occupiers. Where the plural is used in this Agreement it should be read as including the singular where there is only a single Occupier.
- 1.7 The parties to a Memorandum of Terms of Occupation forming part of this Agreement are hereafter referred to as the Holder and the Occupier.

The Memorandum of Terms of Occupation (MOTO)

- 1.8 In all occupations by Crown bodies where this Agreement applies a property-specific Memorandum of Terms of Occupation (MOTO) will be prepared for each occupation using the standard form and schedules given in Appendix 1. When completing MOTOs, Holders and Occupiers should refer to the Guidance Notes in Appendix 2.

The Prescribed Term

- 2.1. For all new and renewed agreements the Prescribed Term will be for a fixed period, for example three (3) years, from the commencement of the MOTO, or the period from the commencement of the MOTO until the expiry date of pre-existing MOTOs between the Holder and other Occupiers, whichever is the shorter.
- 2.2. The expiry date of the Prescribed Term should be the same for every Occupier.
- 2.3. The Occupier and the Holder can agree longer and shorter periods, but both should understand the impact that changing the period will have, for example, at times of vacation.
- 2.4. The Holder and all Occupiers will be responsible for the space they each occupy at the commencement of the Prescribed Term, for the cost of that space and for their proportion of any general costs (including facilities price and utilities). Unless otherwise agreed that responsibility will extend until the expiry of the Prescribed Term.
- 2.5. This responsibility will continue even if the Holder or Occupier has vacated, until an alternative occupant takes over or the space has been passed back to the PPP/PFI accommodation provider or the end of the prescribed term, whichever is sooner, unless otherwise agreed.
- 2.6. Occupiers will thus be responsible for space for up to the length of the 'prescribed term', and the Holder will review the future of the building in line with the prescribed term or otherwise agreed period (see paragraphs 3.1 to 3.7).
- 2.7. At the end of the prescribed term all parties should renegotiate a new agreement. If that agreement is not renegotiated and resigned at the end of the agreed prescribed term then a rolling three (3) year period will be put in place commencing from the day after the agreement ended until a new agreement is negotiated, agreed and signed.

Procedure at the end of the Prescribed Term

- 2.8. Each occupying body will have the option to leave or stay at the end of the Prescribed Term, and will notify other occupants accordingly. To enable any changes to be taken into account in their internal financial planning cycles, occupants should give at least one full financial year's notice of an intention to vacate, a desire to vary the MOTO, or a change in space requirements, i.e. they should notify other occupants of their intentions by the end of the financial year penultimate to the one in which the Prescribed Term ends. Depending on the date on which the Prescribed Term ends, this could require notice of a minimum of one year, and a maximum of two years.
- 2.9. Having been notified of an intention to vacate the other occupants must decide whether to remain in occupation beyond the end of the Prescribed Term or whether to vacate themselves. If a decision is made to remain in occupation, a basis for sharing the costs of any vacated space that cannot be handed back to the PPP/PFI provider will need to be agreed by all the remaining occupants.
- 2.10. Occupants who choose to vacate bear their own costs for vacation
- 2.11. It is not open to a Holder who 'inherited' vacant space on 1 April 1996 to share the cost of that vacant space with other Occupiers without the agreement of the Occupiers concerned.
- 2.12. In the absence of agreement to vary the space requirement, responsibility for **partially** vacated space will remain with its previous occupant.

Holder's residual responsibility

- 2.13. Where all occupants including the Holder wholly vacate, in accordance with the PPP/PFI contract, at the end of the Prescribed Term, the Holder will remain responsible for any continuing costs until transfer of responsibility

to the outsourced accommodation provider.

- 2.14. When occupation by the Holder continues beyond the end of the Prescribed Term Occupiers have a guaranteed right to a further Prescribed Term of occupation; and
- 2.15. Where the Occupier wishes to remain in occupation but a new MOTO has not been agreed before the end of the Prescribed Term the occupation will continue in accordance with paragraph 2.7

VACATION AT THE END OF THE PRESCRIBED TERM

Vacation by Holder

- 3.1 The Holder intending to vacate at the end of the Prescribed Term will give the earliest possible written notification to the Occupiers of their intentions.
- 3.2 Where the Holder wishes to vacate and dispose of the property, the Occupier(s) need to decide whether to become the new Holder of the complete building. The Occupier taking this course of action would then need to formalise its new position by entering into a commercial arrangement. Negotiations must be entered into timeously and negotiations should be completed to allow the Holder to vacate the property as planned. Additional costs incurred by the Holder beyond the vacation date, due to delays in negotiations by the occupier/s, will be met by those occupier/s entering commercial arrangements. These could include additional facilities charges if the property is unable to be handed back to the PPP/PFI service provider
- 3.3 It may be possible under the terms of the PPP/PFI contract to surrender to the provider just the part of the premises occupied by the holder. If this is an option it may be possible for the Occupier(s) to remain subject to negotiation with the Holder.
- 3.4 Where the Holder wishes to vacate but **not** dispose of the property then it may be possible for the Occupier(s) to remain, subject to negotiation with the Holder. Negotiations must be entered into timeously and negotiations should be completed to allow the Holder to vacate the property as planned. Additional costs incurred by the Holder beyond the vacation date, due to delays in negotiations by the occupier(s), will be met by those occupier/s entering commercial arrangements or remaining in occupancy under other terms. These could include additional facilities charges if the property is unable to be handed back to the PPP/PFI provider.
- 3.5 Occupants who choose to vacate at the end of the prescribed term bear their own costs for vacation

Vacation by Occupier

- 3.6 The Occupier intending to vacate at the end of the Prescribed Term will give the Holder and other Occupiers the earliest possible notice of its intention.
- 3.7 Occupants who choose to vacate bear their own costs for vacation

VACATION DURING THE PRESCRIBED TERM - OCCUPIERS

What the Occupier should do

- 3.8 The Occupier intending to vacate during the Prescribed Term will give the Holder the earliest possible notice of its intention. The occupier should also notify OGC.
- 3.9 The Occupier will continue to be responsible for all charges specified in the MOTO until the end of the Prescribed Term; or until the vacant space has been reoccupied by another Crown body; or surrendered to the PPP/PFI accommodation provider. The Occupier will be responsible for any fees or other expenditure in making these arrangements.
- 3.10 The Occupier may consider making financial incentives to contribute towards the costs of another Crown Body to encourage them to take on the space. This may be in the form of FUP subsidies, contribution towards ongoing works or relocation costs.

How the Holder should respond

- 3.11 Within four weeks of being notified of space that is capable of reallocation to another Crown body, the Holder will:
- (i) Decide whether it is interested in taking over the vacant space itself
 - (ii) Notify OGC
 - (iii) Notify the other Occupiers who may wish to take over the vacant space
 - (iv) Advise the Occupier if there is an option to surrender the space to the PPP/PFI accommodation provider, and if so, on what terms. This option should only be considered once other Crown bodies have indicated they do not want to take on the space.

Other Government Departments requiring Space

- 3.12 Where there are competing OGDs for vacant space, the benefit to the Exchequer will be paramount in reaching a decision. If agreement cannot be reached between the OGDs, the dispute procedure at paragraphs 7.1 to 7.2 of this Agreement will apply.
- 3.13 The grant of space in the property to other Crown bodies will be subject to the following:
- (i) neither the Holder nor existing Occupiers will unreasonably withhold permission for the granting of space to a Crown body; and
 - (ii) no Occupier will part with possession nor share occupation of their space or any part of it without the express consent in writing of the Holder; and
 - (iii) Incoming Occupiers will hold space under the terms of this Agreement and may be responsible for their entire fitting out works on taking up occupation, unless agreed otherwise with the Holder.

HOLDERS REQUESTING OCCUPIERS TO VACATE DURING OR AT THE END OF THE PRESCRIBED TERM

What the Holder should do

- 3.14 Where the Holder wants Occupiers to leave during the prescribed term it has no right to terminate the MOTO. The Holder can as an incentive offer contributions towards the cost of relocation. The following financial assistance could be available from the Holder by negotiation with the Occupiers and subject to their demonstrable need on a case by case basis:
- (i) reimbursement of reasonable removal costs;
 - (ii) funding of reasonable ingoing works to the same standard as the existing space; and
 - (iii) where the rental cost of alternative space provided exceeds the rental cost of the existing space, the Holder should be prepared to provide appropriate 'top up' funding at least until the start of the financial year following the next estimates round as part of the financial planning cycle or the end of the prescribed term which ever is sooner.

How the Occupiers should respond

- 3.15 The Occupiers have a responsibility to co-operate with the Holder wherever possible and to deal with occupancy matters in a positive and constructive way. An example would be by agreeing to reduce notice times where the Holder is subject to unexpected and urgent pressures that could not be foreseen in planning.

- 3.16 After receiving a request to vacate there are a number of options that each Occupier can explore in conjunction with the other Occupiers, the Holder and OGC:
- (i) decide whether or not there is a continuing operational need for their presence in that location;
 - (ii) where the Holder wishes to vacate and dispose of the property, to decide whether to become the new Holder of the complete building, in accordance with paragraph 3.2.
 - (iii) explore the possibility of sharing if the Holder is moving to another property in a suitable location; or
 - (iv) consider finding suitable alternative space, by consulting OGC on available vacant space on the Civil Estate, or if necessary via a new acquisition.
- 3.17 The Occupiers should exercise restraint in the costs they seek to recover from the Holder and should not seek to gain financial advantage because of the Holder's request.

Holders requesting Occupiers to vacate part of their space

- 3.18 There are only two legitimate reasons whereby the Holder can reasonably request Occupiers to give up **part** of their space. These are:
- (i) expansion by the Holder within the property due to changes in operational requirements or increase in staffing; or
 - (ii) expansion by the Holder within the property due to an estate rationalisation scheme.
- 3.19 The Holder must take the following steps:
- (i) give the earliest possible written notification to Occupiers of their requirement to take over part of their space and the reason(s) why. At least one full financial year's notice should be given and the notification should be made at local level;
 - (ii) at local level, consult with Occupiers as early as possible to discuss timing, implications and the various options available; and
 - (iii) if agreement is reached, pay all reasonable costs incurred as a result of the internal move/alterations.
- 3.20 And, as above, Occupiers have a responsibility to co-operate with Holders and to deal with such requests in a positive and constructive way. Where a disagreement arises an appraisal based on best value for money for the Exchequer will normally indicate the solution.
- 3.21 It may be that after consultation, all parties agree that complete vacation by the Occupier is the only solution. If this occurs, the procedures in paragraphs 3.14 – 3.17 governing vacation at the request of the Holder then apply.

SHORT TERM USE OF VACANT SPACE

Short term use of vacant space

- 3.22 The Holder, or Occupiers with the **Holder's agreement**, may offer vacant space to other Crown bodies short-term (for example, for decant purposes);, but only for a period which does not extend beyond the Prescribed Term.

VARYING THE TERMS OF THE MOTO

Varying the MOTO during the Prescribed Term

- 3.23 Occupiers or Holders wishing to vary the terms of their MOTO's during the Prescribed Term, including a change in space requirement may only do so by agreement. Paragraphs 3.14 – 3.21 relate specifically to situations where the Holder desires one or more of the Occupiers to vacate all or part of their space. There may be other circumstances in which a variation is desired and these should be the subject of negotiation between the parties and in House Committees.
- 3.24 As much notice as possible should be given to enable changes to be allowed for in financial planning cycles.

Varying the MOTO at the end of the Prescribed Term

- 3.25 Holders and Occupiers wishing to vary the terms of their MOTO at renewal, i.e. at the end of the Prescribed Term, should notify other occupants in accordance with paragraph 2.8.
- 3.26 Where notification has **not** taken place in accordance with that paragraph it will be assumed that the Occupier wishes to renew the MOTO for a further Prescribed Term. Within reason, existing terms will be carried forward save for those dealing with Prescribed Term, dates and payments.

CHANGE IN STATUS OF CROWN BODIES

Machinery of Government Change

- 3.27 If the functions of a government department who is the current Holder transfers to another Crown body, then the following options may be available subject to the terms of the PPP/PFI Contract.
- 3.28 The contract may allow the property to remain on the PPP/PFI portfolio of the original department who will become the Holder even though they may no longer be in occupation. In this scenario a MOTO will be agreed with the former Holder who will change status to an Occupier. The existing Occupier(s) MOTO's should be unaffected by this.
- 3.29 Under the terms of the contract, the property may revert back to the PPP/PFI provider and the holder will have to enter into a commercial tenancy to remain in the property. The Occupier(s) MOTO may be affected by this and may need to be renegotiated. The Holder will however use reasonable endeavours to ensure the Prescribed term can be retained.
- 3.30 It may be possible under the terms of the contract for the property to be partially vacated and returned to the PPP/PFI provider.
- 3.31 If the Occupier(s) agree and the terms of the contract permit, it may be possible for the property to be fully vacated and returned to the PPP/PFI provider.
- 3.32 The above options may need to be adapted to meet the scenario when only part of the Holders functions move to another Crown body.

CHANGE IN STATUS OF CROWN BODIES TO NON-CROWN BODIES

Termination of MOTO

- 3.33 It would normally be expected that a non-Crown body's occupation would be covered by a commercial lease. Therefore, when a Crown body changes status and becomes a non-Crown body, for example a Non-Departmental Public Body, the MOTO(s) will terminate. This applies where a Holder or Occupier ceases to be a Government Department, Ministry, Agency or other public body whose functions, and those of its officers and servants, are legally defined as being performed on behalf of the Crown.

Change in status of the Holder

- 3.34 If the Holder has become a non-Crown body with landholding powers then it is possible the property may be surrendered back to the PPP/PFI provider and a new commercial tenancy established. The Occupiers may choose to vacate within six months to avoid a commercial tenancy with a non-Government owner, or, they may decide to take a commercial tenancy from either the new non-Crown body or the PPP/PFI accommodation provider.
- 3.35 Where a change of status is anticipated, the Holder will take the following steps:
- (i) give the earliest possible written notification to the Occupier of its proposed change in status. Although political decisions may impose time constraints, wherever possible, the Holder will give at least one full financial year's notice and consult with Occupiers as early as possible to discuss timing, implications and the various options available. Reasonable time targets should be agreed for all processes involved so that the Occupiers can make appropriate provision in their financial planning cycles. The notification will be made at local level and it will be an Occupier's responsibility to notify its Head Office if appropriate; and
 - (ii) similarly, the Holder will notify OGC to alert them to a possible relocation need. OGC should also be involved in the discussions at an early stage with the aim of reaching an agreed strategy for the way forward.
- 3.36 If a Holder changes its status the Occupiers are required to choose between the options set out in paragraphs 3.34 and 3.38. Where the Occupiers can show that the Holder's change of status will cause them additional extra costs that can not be recovered or provided for within the financial planning process, the following financial assistance will be available from the Holder subject to Occupiers' demonstrable need on a case by case basis:
- (i) reimbursement of reasonable removal costs;
 - (ii) funding of reasonable ingoing works to the same standard as the existing space;
 - (iii) where the rental cost of alternative space exceeds the rental cost of the existing space, the Holder should be prepared to provide appropriate 'top up' funding at least until the start of the financial year following the next estimates round of the financial planning cycle; or
 - (iv) where a new commercial tenancy is agreed, the Holder will compensate the Occupiers for any financial loss caused by the change from MOTO to commercial lease.

How the Occupier should respond

- 3.37 Occupiers have a clear responsibility to co-operate with the Holder wherever possible and to deal with occupancy matters in a positive and constructive way, for example, by agreeing to reduce notice times where the Holder is subject to unexpected and urgent pressures that could not be foreseen in planning.
- 3.38 After being notified of an anticipated change of status there are a number of options that Occupiers can explore in conjunction with the other Occupiers, the Holder and OGC. These are:
- (i) to decide whether or not there is a continuing operational need for their presence in that location;
 - (ii) to consider finding suitable alternative space, by consulting OGC on available vacant space on the Civil Estate, and if necessary via a new acquisition; and
 - (iii) to explore the possibility of agreeing a commercial lease with the new non-Crown body or the PPP/PFI accommodation provider.
- 3.39 Occupiers should exercise restraint in the costs they seek to recover from the Holder and should not seek to gain financial advantage because of the Holder's change in status.

Change in status of an Occupier

3.40 The parent Crown body of a former Occupier will assume responsibility for the space and will decide with the other occupants whether the new non-Crown body can be permitted to occupy under a commercial lease/ sub-lease, where legally possible, or a financial memorandum between the parent and the NDPB where commercial arrangements are not practicable. In England, Wales and Northern Ireland, if an Occupier changes status the Holder may require it to vacate within six months to avoid creating a secure tenancy under the Landlord and Tenant Act 1954.

'CONTRACTED-OUT' GOVERNMENT FUNCTIONS

'Contracting Out'

- 3.41 During the duration of the MOTO Government functions may be 'contracted-out' to a private sector contractor employed to perform the Holder's or Occupier's functions.
- 3.42 This may require the MOTO(s) to be terminated to comply with the PPP/PFI contract terms and the Alienation provisions in any leases on the property.
- 3.43 In the event that the MOTO(s) has to be terminated, negotiations should take place between the PPP/PFI contractor, the Department who awarded the PPP/PFI contract and the Department contracting out the works to set up a commercial agreement for the occupation.

CLEANLINESS AND MAINTENANCE AT VACATION

Cleanliness and Maintenance at vacation

- 3.44 When a Holder vacates it should ensure that the space is left in a clean and tenantable condition, cleared of any rubbish and surplus furniture etc. Failure to do this may result in rectification charges being claimed by the new Holder against the former Holder.
- 3.45 The duties and responsibilities of Occupiers in respect of outstanding maintenance and works are set out in paragraphs 6.8 to 6.9.

LIAISON ARRANGEMENTS

Dealings with PPP/PFI Contractors and Landlords

- 4.1 All dealings with the PPP/PFI Contractor or the commercial landlord will be the responsibility of the Holder except where agreed otherwise. In conducting these dealings, the Holder will act in the general interests of all occupants.

Information available to Occupiers

- 4.2 Occupiers will have the right of access by request through the House Committee to any documentation related to the management and maintenance of the property.

HOUSE COMMITTEES

Purpose of the House Committee

- 4.3 In accordance with paragraph 1.3 the Holder will establish House Committees, or equivalent arrangements, with representation from each Occupier. The PPP/PFI provider may be represented at the House Committee dependant on the services provided as per the PPP/PFI Contract. The Holder will ensure that the Committee meets at least once a year.
- 4.4 To provide a basis for joint planning the Committee will discuss and agree the appropriateness, standard and cost of the services that are being provided. It will also provide the means to ensure that the Holder does not act purely in its own self-interest.

Duties and Responsibilities

- 4.5 Although the following list is not exhaustive the Committee will be the forum for:

Health and Safety

(i) Discussing health and safety, fire, security and business continuity matters. The Holder will take lead responsibility here, including responsibility for risk assessments relating to the structure and safety of the building, and to areas, services and facilities in common use. Since the primary responsibility for safeguarding the health and safety of employees rests with the employing Occupier, Occupiers will wish to satisfy themselves via the House Committee that all appropriate measures are being taken; There may be occasions when Occupiers wish to satisfy themselves by seeing the appropriate maintenance documentation;

Repair and Maintenance

(ii) Ensuring that the property is maintained in an efficient, clean, environmentally friendly and energy efficient manner;

(iii) Discussing and agreeing the programming of future works and maintenance to enable Occupiers to plan within their internal financial planning cycle. Responsibility for deciding on the programme for common areas will rest with the Holder; Inspection, maintenance and works responsibilities are set out in paragraphs 6.1 to 6.9;

(iv) Reviewing the respective maintenance responsibilities of the Holder and Occupiers;

Facilities Price

(v) Resolving any disputes over the level and method of apportionment of charge for all outgoings;

Holder's Rules

(vi) Reviewing the Holder's rules and regulations governing occupation of the property (see paragraph 6.5);

Estate Strategy and changing needs

(vii) Discussing the Holder's and Occupiers' PPP/PFI proposals, property interests and estate strategies, and interests in any forthcoming or ongoing negotiations with the landlord;

(viii) Ensuring that the Holder/Occupiers are aware of a Committee member's requirement for space changes in the building, including a need for additional space (see paragraphs 3.23 to 3.26);

(ix) Considering options for vacant space including space which is not capable of independent occupation, for example, rationalisation of pockets of vacant space to produce a unit which is capable of independent occupation (see paragraphs 3.12 and 3.13); and

Rating

(x) Formulating a Rating Agreement in which all arrangements for apportionment and reimbursement of rates are agreed. The Rating Agreement will formalise the procedures by which the Crown occupants in a shared property can liaise with the ratepayer and by which queries regarding the bill or assessment can be raised. In the absence of other agreements the Holder will be responsible for all discussions with the Billing Authority/Council or Valuation Office/Assessor. Unless otherwise agreed, where the Occupier is the ratepayer the Holder will act as its authorised representative in all rating matters.

RATING AGREEMENTS

Rating Agreements

4.6 Where a Rateable Value (RV) is attributed to a Crown property comprising more than one legal interest, for example the Holder's lease together with one or more other leases held by other Crown bodies, the House Committee should co-operate with the other Crown occupants to draw up a Rating Agreement collectively that will ensure that the ratepayer will be reimbursed.

ACCOUNTING FOR EXPENDITURE AND INCOME

General

- 5.1 The main elements of expenditure are Facility Unit Price, Rates, Utilities, services provided by the Holder's in-house staff, ad hoc major maintenance and new works.

Invoice, payment and reconciliation timetable

- 5.2 In the absence of other agreed arrangements Rates, Utilities, Facility Unit Price and services provided by the Holder's in-house staff will be invoiced and paid for in accordance with the following timetable, April, July, October and January. At the end of the fourth quarter an end-of-year reconciliation, if necessary, will take place.
- 5.3 It will be the Occupier's responsibility to pay the Holder's invoices promptly and in full. The Holder will deal with any queries within 30 days **after** payment **in full** has been made.
- 5.4 At the end of the financial year, if necessary, a Reconciliation Statement may be provided showing the Occupier's proportion of actual expenditure for the year, the amount received from the Occupier and a request for a supplementary payment or refund if necessary.
- 5.5 On checking of invoices presented by supplying departments, Government Accounting says that:
 "The other department(s) should satisfy itself that it has received the goods and services (except in cases where it has been agreed that supplies will be "checked in" by the lead department). It should also check that charges are consistent with the catalogue prices or quotations, taking into account the guidance on selective checking in Annex 4.5 (*GA Chapter 4*), and should pay their bills promptly, observing the terms and conditions set out in the relevant agreement." (*GA 14.5.9*)
- 5.6 If the actual costs are greater / less than the ASC, but they fall within the acceptable variance (+/- 10% of ASC up to a maximum of £5,000), no further action will be taken, i. e. an additional payment / refund will not be necessary. Under cash accounting, the Holder will clear its suspense account in accordance with its own internal procedures. Under resource accounting, similar procedures will clear the control account used to record the Occupier liability for ASC.
- 5.7 In the event that actual costs are greater / less than the ASC, and the difference falls outside the acceptable variance, then an appropriate adjustment will be made, i.e. an additional payment / refund will be necessary. No special procedures are required to properly disclose the position under resource accounting. Under cash accounting, the supplementary payment / refund will be accounted for using the suspense account in the normal way. However, it should be thrown back to the Vote for that financial year before the Vote Account is closed (usually towards the end of May each year).

Facility Unit Price (FUP)

- 5.8 Under PFI arrangements, the Facility Unit Price includes any Licence Payment.
- 5.9 The FUP also refers to those services indicated as "Yes" in Part A of the First Schedule of the MOTO. The Part A standard list may be added to, eg to include canteen usage, by agreement between the parties **provided always** that government accounting requirements are satisfied.
- 5.10 The FUP will be multiplied by the percentage space allocated to each Occupier in their MOTO to determine the Occupier's share of the FUP in proportion to the space occupied.

In summary, the Occupier's FUP calculation is:

$$\frac{\text{Total FUP for the premises} \times \text{Occupier's Space (NIA)}}{\text{Total letting area of the premises (NIA)}}$$

Total letting area of the premises (NIA)

- 5.11 Having carried out this calculation the Holder will provide the Occupier with an estimate of the Occupier's FUP for the first year of occupation. The FUP will be subject to increase via indexation (subject to contract with the PPP/PFI accommodation provider)
- 5.12 In the absence of other agreed arrangements the Holder will invoice the Occupier for FUP in accordance with the timetable set out at paragraph 5.2.
- 5.13 The Holder must keep Occupiers informed of likely expenditure against estimates as the year progresses and inform them immediately if any significant or unexpected payments materialise later in the financial year. A reconciliation should be carried out at the end of the third quarter in accordance with paragraph 5.2.
- 5.14 It is the Occupier's responsibility to pay the Holder's FUP invoices promptly and in full. The Holder will deal with any queries within 30 days **after** payment **in full** has been made. Copy invoices for the individual service costs supporting the FUP will **not** be provided without the agreement of the House Committee (see paragraph 4.2) or the Occupier raising a formal dispute under the CEOA (see Chapter 7).

Rates

- 5.15 Where the Holder or one of the Crown occupants other than the Occupier is responsible for payment of rates, the Holder will invoice the Occupier for its share, in proportion to the space it occupies. The Holder will provide the Occupier with an estimate in advance of its share of the annual rates amount. In the absence of other agreed arrangements rates payments will be demanded and paid in accordance with the timetable set out at paragraph 5.2. Rates should not be included in the Facility Unit Price.
- 5.16 Where the Occupier is responsible for payment of rates, in the absence of other agreed arrangements, the Occupier will pass the bill to the Holder for payment. The Holder should make payment within the period specified by the Billing Authority/Council. The Holder will invoice the Occupiers for their appropriate shares of the rates in accordance with the timetable set out at paragraph 5.2.
- 5.17 It is the recipient's responsibility to pay rates invoices promptly and in full. The Holder will deal with any queries within 30 days **after** payment **in full** has been made.

UTILITIES

Utilities

- 5.18 Where the Holder is responsible for payment of utilities, the Holder will invoice the Occupier for its share, in proportion to the space it occupies. The Holder will provide the Occupier with an estimate in advance of its share of the annual utility charge amount. In the absence of other agreed arrangements utility charges will be demanded and paid in accordance with the timetable set out at paragraph 5.2. Utility charges should not be included in the Facility Unit Price.
- 5.19 Where Occupiers have separate meters for utilities, they are responsible for making payments direct to the utility supplier.
- 5.20 It is the recipient's responsibility to pay utility invoices promptly and in full. The Holder will deal with any queries within 30 days **after** payment **in full** has been made.

SERVICES PROVIDED BY THE HOLDER'S IN-HOUSE STAFF

Services provided by the Holder's in-house staff

- 5.21 Services that are provided by the Holder's in-house staff e.g. office services must **not** be included in the FUP. Under cash accounting rules office services are charged in full (as running costs) to the Vote of the Holder with the Holder appropriating in aid receipts from the Occupier (who charges the payment to their Vote as running costs). Full disclosure of this expenditure and income will also be required under resource accounting and budgeting (RAB). See paragraph 5.1.
- 5.22 These services should be listed in Part B of the First Schedule of the MOTO together with the number of staff benefiting from them.
- 5.23 The Holder will invoice the Occupier for the appropriate proportion of the cost of services and payment will be demanded in accordance with the timetable set out at paragraph 5.2. Apportionment will normally be made pro-rata to the numbers of staff benefiting from them. Reconciliation will take place in accordance with paragraphs 5.2 and 5.7.
- 5.24 It is the Occupier's responsibility to pay the Holder's services invoice promptly and in full. The Holder will deal with any queries within 30 days **after** payment **in full** has been made.

AD-HOC MAJOR MAINTENANCE AND NEW WORKS EXPENDITURE

Ad-hoc Major maintenance and new works expenditure

- 5.25 Any ad-hoc major maintenance or **new works** expenditure on the premises which is **classified as current expenditure** and has been agreed by the House Committee as **not** being appropriate for inclusion in the FUP will be shared with the Occupiers by the Holder in proportion to the space occupied. Such expenditure will be invoiced to the Occupier in arrears (see paragraph 6.7 for a definition of **new works** and see paragraph 4.5 for House Committee responsibilities).
- 5.26 Any ad-hoc major maintenance or new works expenditure carried out by the Holder for the exclusive benefit of the Occupier which is not to be included in the FUP will be invoiced to the Occupier in arrears. Reconciliation will take place in accordance with paragraph 5.4.
- 5.27 It is the responsibility of the Occupier to pay the Holder's ad-hoc major maintenance or new works invoice promptly and in full. The Holder will deal with any queries within 30 days after payment in full has been made.

VALUE ADDED TAX (VAT)

VAT

- 5.28 It is a basic principle of VAT that only the person who receives the supply is able to reclaim VAT. Invoices which attract deductible and recoverable VAT will, therefore, be paid in full by the Holder who will then apply for the appropriate refund from HM Customs & Excise as part of its own VAT Return. HM Treasury's PES(99)23 states that:
- "... recoverable VAT payments where the major occupier (*Holder*) has taken a lease should not be passed on by the major occupier (*Holder*) to minor occupiers (*Occupiers*) under a Memorandum of Terms of Occupation (MOTO). The major occupier (*Holder*) is responsible for all VAT payments on the lease and any subsequent recovery of VAT, even where leased accommodation and services are shared by a minor occupier (*Occupier*)."
- 5.29 Invoices for all property related charges will, therefore, be made **net** of reclaimable VAT.

Right to Inspect

6.1 This Agreement does not confer on the Occupier the right to exclude the Holder or any authorised person from the space it occupies. In order to meet their own maintenance obligations the Holder, the PPP/PFI provider, the Landlord or their agents will, on giving reasonable notice, have the right to inspect the Occupier's space.

Acceptable Maintenance and Allocation of Responsibilities

6.2 The Holder will be responsible for all maintenance unless a separate written agreement is signed and attached to this agreement. An example of the allocation of maintenance and building services responsibilities is given in Appendix 3. However, there will be some responsibilities that can only be decided on the basis of local circumstances. General guidance on acceptable maintenance condition is given at Appendix 4.

6.3 Holders and Occupiers must bear in mind that it is their responsibility under statutory legislation including Health and Safety, to ensure that all responsibilities are allocated clearly.

Internal Maintenance

6.4 The Occupier will keep the interior of its space together with the fixtures and fittings in good repair and condition and leave them so on vacation (see paragraphs 6.8 to 6.9. See also paragraph 3.44).

Compliance with General Rules and Regulations

6.5 The Occupier will abide by such reasonable rules and regulations as may be introduced from time to time by the Holder for the benefit of the occupants of the property. All such rules and regulations will be consistent with the terms of this Agreement.

Alterations and New Works

6.6 No works involving changes to the structure and fabric of the building (including internal decoration and carpeting) can be undertaken without the express permission of the Holder and / or the PPP/PFI accommodation provider. The Occupier will not make alterations in or additions to its space or remove any fixtures or fittings without the previous written consent of the Holder. To inform its decision, the Holder may request plans and specifications for any proposed works, and may need to obtain Landlord's consent. When the Occupier undertakes any works, it will be its responsibility to ensure compliance with all statutory and lease requirements and, on completion, to supply the Holder with any relevant certificates and updated drawings.

6.7 The Occupier is prohibited from undertaking new works without specific agreement in writing from the Holder. Subject to contract these work may have to undertaken by the PPP/PFI provider. Where the Holder grants consent, which must be in writing, the Occupier will meet all associated costs, including Holder's and/or the PPP/PFI provider's costs such as those involved in obtaining Landlord's consent. The Holder may require reinstatement of the space at the end of the Prescribed Term as a condition of granting consent for the new works. In order to be able to make provision in its accounts for this future cost the Occupier may, at any time during its occupation, request the Holder to provide a statement of the reinstatement that would be required and an estimate of cost. **New Works** in this context are works that will generally result in significant improvements or enhancements to the building such as the construction of small new buildings, extensions or alterations to existing buildings, or the provision of new plant or other facilities within existing buildings. Where capital expenditure is involved, these works will generally need to be accounted for on the Holder's balance sheet; hence it is the Holder who should make the decision as to whether work is deemed new works or maintenance. Any disagreement will be subject to the dispute procedure in Chapter 7.

Vacation by the Occupier – Repair, Reinstatement and Dilapidations

- 6.8 The Holder may inspect the space from time to time and will do so on receipt of the Occupier's notice of intention to vacate or when serving its own notice to quit to ensure that the Occupier's obligations under the MOTO have been fulfilled. Where there is a want of repair and/or reinstatement that is required as a condition of the Holder's consent to new works the Occupier will be required to carry out the necessary repair and/or reinstatement before vacation. Where the Occupier fails to carry out such repair and/or reinstatement to the satisfaction of the Holder before vacation the Holder will recover the cost of any such repair and/or reinstatement from the Occupier. The Holder will require any payments due to be made within the financial year in which vacation occurs.
- 6.9 Therefore, at the end of the occupation, the Holder will, at its discretion, require from the Occupier:
- (i) payment for the cost of repairs to the property and/or reinstatement of any alterations or adaptations carried out in the Occupier's space where this reinstatement was a condition of the original consent;
 - (ii) payment for the cost of repair of any wanton damage caused or permitted by the Occupier; and/or
 - (iii) agreement to accept liability for a fair proportion of a future dilapidations settlement. Since dilapidations negotiations are frequently protracted and the outcome uncertain the Holder will keep the Occupier informed of progress in accordance with paragraph 6.11.
 - (iv) Under the terms of the PPP/PFI contract, responsibility for meeting some or all dilapidation payments may have passed to the PPP/PFI provider.

Dilapidations Claims and Payments

- 6.10 In accordance with paragraph 6.9 where:
- (i) the Occupier has accepted liability for any future dilapidations claim; and
 - (ii) the Holder has kept the former Occupier informed of any developments in the progress of the dilapidations claim,
 - (iii) the Holder and former Occupier will take account the possibility of any future dilapidations costs and budget accordingly.
- 6.11 The accounting, invoicing and settlement procedures for dilapidations are the same as those for Facility Unit Price, except that payment is delayed until the settlement is known. Under resource accounting, Holders and Occupiers may need to make provisions for liabilities arising from dilapidations. On subsequent settlement of the claim:
- (i) the Holder will invoice its former Occupiers for the appropriate share of the dilapidations claim having given reasonable notice of intent to request payment;
 - (ii) the former Occupier(s) will arrange payment of the Holder's invoice(s) promptly and in full.
 - (iii) the Holder will deal with any queries within 30 days after payment in full has been made.

Nuisance and Risks

- 6.12 The Occupier will neither:
- (i) cause nor permit any nuisance or annoyance to the other occupants of the property nor use its space in any way likely to increase the normal Health and Safety and fire risks nor, if a lease requirement, the fire insurance premium and will take all proper precautions to minimise the risk of fire or damage by frost including any precautions reasonably required by the Holder; nor

(ii) store, nor bring upon the property any materials or liquid of a specially combustible, inflammable, dangerous or noxious nature as defined in the most recent version of the Control of Substances Hazardous to Health Regulations (COSHH).

- 6.13 The Occupier will be responsible for and pay for any damage caused to the property or any persons by any act, default or negligence of its servants, agents, licensees or visitors.
- 6.14 In the event of accidental damage of the kind which would usually be covered by insurance
- 6.15 The risk may have been transferred to the PPP/PFI Contractor to reinstate
- 6.16 Where the Crown has chosen to accept the risk itself, the Occupier will repair or reinstate at its own expense to the satisfaction of the Holder, or, will reimburse the Holder's costs where the Holder chooses to carry out the work itself. In the event of substantial destruction of the property the Occupiers and Holder will apportion the costs on the basis of ALA or NIA, or some other agreed method of apportionment.

- 7.1 Each party should report any cases where agreement cannot be reached locally to their respective Head Offices. The report will be signed at least at Grade 7 or equivalent level, should give a full account of the case, and include the following:
 - (i) the nature of the problem;
 - (ii) the steps taken to resolve the problem; and
 - (iii) the reasons for continuing disagreement.
- 7.2 Head Offices will discuss and decide on a way forward. In the unlikely event of failure to agree, the matter may be referred to their respective Ministers.



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