



We have been involved in a number of commercial installations and act for one of the UK's largest installers of residential units.

We decided that it may be useful in this document to share with others the lessons that we have learnt from our own experience. This may assist those considering such schemes for themselves.

OUR THOUGHTS ON SET UP

These are complicated legal arrangements and it is therefore essential to ensure, as far as possible, that heads of terms are agreed between parties before any drafting of documents takes place.

We have worked on around 2,000 smaller schemes and several large commercial ones and have currently registered about 500 roof leases at Land Registry.

The following will be a useful starting point in determining head of terms:

- 1. Reason for the installation:** FIT currently pays between 8.5p and 15p per Kwh for larger systems. What are the client's drivers for the scheme - cheap power, improved green credentials, is owner an owner/occupier?
- 2. Existing charges over title and transferability:** If the property is charged to a bank, the owner will need written consent from the lender before entering into the lease. The owner must not be refrained from transferring a part of the freehold for the duration of the agreement.
- 3. Tenanted property:** Leasehold properties will require a Licence for Works from the landlord, consent from landlord's funder and the tenant's funder. Who will pay these legal fees/other professional costs?
- 4. Alternatives to leasing:** We have looked at many alternatives to roof leases such as licences. Due to funders of the apparatus requiring security, it is very difficult for this to be anything other than a lease which can be registered at Land Registry and charged to the funder. If the client is paying for or entering into a hire agreement for the units, then this may be different.
- 5. The lease term and electricity power agreement:** This will generally will be 25 - 35 years. Most of the roof leases are for 25 years and 3 months and generally we would not recommend a longer term, as this then appears to affect market value of the property.
- 6. Flexibility in the installation over the period:** We normally require the supplier and installer of the units to remove temporarily the system if repairs are needed to the roof or to the building. The owner will probably have to agree to cover the costs of removing and reinstalling the panels, plus the temporary loss of tariff payments to the tenant.
- 7. Insurance:** How much of the buildings insurance is payable by the owner? Who will insure the PV system? If the building is damaged due to a fault of the PV system, which policy will cover the loss? We normally refer to trusted insurance brokers for advice as to the policies available and review those terms ourselves to ensure sufficient cover.
- 8. Rates:** Who will pay rates in respect of the property, i.e. the roof, or are they to be apportioned?
- 9. Rent of the unit:** This will normally be a peppercorn with the actual amount to be covered by an electricity supply agreement.
- 10. Mechanism for agreeing rate per unit:** Either annually or at other intervals. This may be linked to RPI or be cheapest supply rates at the time. Whatever is chosen, agreement can be a contentious issue.

11. **Charging the lease:** At times, tenants require the right to charge the lease to raise funds to pay for the installation itself.
12. **Break clauses:** What interval and what are the financial consequences?
13. **Operation of statute:** A small technical point but a roof lease must be excluded from the Landlord and Tenant Act 1954 or the tenant will have an automatic right to another lease. Statutory wording needs to be included to ensure the tenant does not have the right to renew the lease, unless the parties agree otherwise.
14. **Ownership at termination:** At the end of the term, does the system belong to the tenant or the landlord and who has to pay to remove it?
15. **Use of electricity:** Is there any intention to export surplus electricity into the grid or will it all be for the owner's own use?
16. **Installation issues:** Where are the switchgear, inverter, metres and transformers to be located? Are there likely to be any restrictions on access for these? How long will the external cabling and tray be? Is the grid connection up to the new supply?
17. **Liability for mechanical fixings:** Who is accountable for the mechanical fixings to the roof, both robustness, watertightness and against wind damage. There has been a marked increase in claims involving leaking roofs of late!
18. **Maintenance:** Who is responsible for routine inspections, servicing, cleaning etc?

Key contacts



Richard Spencer

Partner

richard.spencer@bpe.co.uk
01242 248232
07725 242449



Candice Lane

Paralegal

candice.lane@bpe.co.uk
01242 248291



David Holmes

Associate Solicitor

david.holmes@bpe.co.uk
01242 248268
07725 244283



Fraser Chambers

Solicitor

fraser.chambers@bpe.co.uk
01242 248296



Jon Close

Partner

jon.close@bpe.co.uk
01242 248278
07725 242570

For further information contact:
Richard Spencer on 01242 248232
richard.spencer@bpe.co.uk

BPE Solicitors LLP

Cheltenham

St James' House
St James' Square
Cheltenham
GL50 3PR
Tel: +44 (0)1242 224433
Fax: +44 (0)1242 574285
DX: 141660 Cheltenham 11
Email: bpe@bpe.co.uk
www.bpe.co.uk