Staff Paper

Project **Leases**

Topic **Definition of a lease—application examples**

Introduction and background

1. Agenda paper 1D / FASB memo 158 discusses, and includes staff recommendations on, the definition of a lease. This paper sets out 7 examples illustrating the application of:

   (a) the staff recommendations in Appendix A of Agenda paper 1D / FASB memo 158 (**Approach A**); and

   (b) the staff recommendations in Appendix B of Agenda paper 1D / FASB memo 158 (**Approach B**).

2. The following examples have been prepared to help the boards decide on the guidance to be included in the final leases standards regarding the definition of a lease:

   (a) Example 1: Rail car

   (b) Example 2: Photocopier

   (c) Example 3: Time charter

   (d) Example 4: Drilling rig

   (e) Example 5: Overseas manufacturer

   (f) Example 6: Power purchase agreement—coal-generation facility

   (g) Example 7: Power purchase agreement—solar plant

Example 1: Rail car

[note: this example is similar to the rail car example discussed in agenda paper 2 / FASB memo 127 at the joint board education session on 1 and 2 February 2011. Some of the facts have been merged or changed to better illustrate the application of the proposed guidance.]

> **Example 1(a):**
>
> An arrangement between Customer and Freight Supplier allows Customer to use 10 rail cars (wagons) owned by Freight Supplier for five years. The freight that Customer intends to transport requires rail cars of a type that is specified by Customer in the contract.
>
> Each rail car has a unique identification number that is stated in the contract. Freight Supplier is required to substitute a specific rail car with an equivalent rail car of the same type when a specific car needs to be serviced or repaired.
>
> Customer determines how the rail cars should be used throughout the five year term (eg when and where freight is to be transported). When the rail cars are not in use for transportation purposes, they are kept at Customer's premises—Customer can use the rail cars for another purpose (eg storage) if it so chooses.
>
> Customer pays a flat fee of CU50,000 per car annually.

Example 1(a)—Approach A: the contract contains a lease

Specified asset

3. Fulfilment of the contract depends on the use of the 10 rails cars—the rail cars are explicitly identified in the contract and are substituted only when the rail cars are not operating properly.

Right to control the use of the rail cars

4. Customer has the right to control the use of the 10 rail cars because:

   (a) it has the right to obtain substantially all of the potential economic benefits from use of the rail cars throughout the five year term of the contract—the rail cars are available for Customer's use throughout the term of the contract, including when they are not being used to transport Customer's freight.

   (b) it has the ability to direct the use of the rail cars—Customer determines how, when and in what manner the rail cars are used, not only when they are being used to transport Customer's freight but throughout the term of the contract.

Example 1(a)—Approach B: the contract contains a lease

Specified asset

5. Same analysis as Approach A—see paragraph 3 above.

Right to control the use of the rail cars

6. Customer has the right to control the use of the 10 rail cars because it has the ability to operate the rail cars in a manner that it determines while obtaining more than an insignificant amount of the output or other utility of the rail cars.

What if (example 1(b)):

The arrangement between Customer and Freight Supplier requires Freight Supplier to transport a specific quantity of goods in accordance with a stated timetable for a period of five years. The timetable and quantity of goods specified is equivalent to Customer having the use of 10 rail cars for five years.

Freight Supplier provides the rail cars, driver and engines as part of the contract. The contract states the nature and quantity of the goods to be transported, but does not provide any details of the rail cars to be used to transport the goods. The rail cars are stored in Freight Supplier's premises when not being used to transport Customer's freight. Freight Supplier provides instructions to the driver of the engine and decides, for example, whether other rail cars are also attached to the engine and the order of collection and delivery of goods.

Transportation of the goods identified in the contract requires rail cars of a type similar to those identified by the Customer in example 1(a). Freight Supplier could use any rail cars from a pool of similar rail cars to transport the goods over the five year period.

Customer pays a flat fee of CU500,000 annually.

Example 1(b)—Approach A and Approach B: the contract does not contain a lease.

Specified asset

7. Fulfilment of the contract does not depend on the use of 10 identifiable rail cars—the rail cars are not explicitly identified in the contract and Freight Supplier could use any 10 of a number of rail cars of a particular specification to provide transportation services to Customer.

8. An analysis of the 'right to control the use of the rail cars' is not required. Nonetheless, under Approach A, Customer does not have that right to control the use of the rail cars for the reasons noted in paragraphs 10 and 11 below.

What if (example 1(c)):

Same facts as example 1(b) except Freight Supplier has only 10 rail cars of that type available and, due to the specialised nature of Customer's freight, is unable to fulfil the contract using rail cars other than the 10 rail cars available in its depot. [Ie it is not practically and economically feasible for Freight Supplier to obtain rail cars from another source that could be used to fulfil the contract.]

Example 1(c)—Approach A: the contract does not contain a lease

Specified asset

9. Fulfilment of the contract depends on the use of a specified asset. The rail cars are not explicitly identified in the contract. Nonetheless, the 10 rail cars are implicitly identified because Freight Supplier is unable to deliver the services specified in the contract using any other rail cars. [Note: there may be a question of whether Customer would have enough information available to assess that the rail cars are implicitly specified.]

Right to control the use of the rail cars

10. Customer does not have the right to control the use of the rail cars because it does not have the ability to direct the use of the rail cars—Freight Supplier has that ability. Use of the rail cars is dependent upon the use of another asset—the engine. Freight Supplier decides how, when and in what manner the rail cars are used by making decisions about the use of the engine. Although Customer specifies the quantity and timing of delivery of the transportation services,

Customer has no ability to direct the use of the engine and, thus, has no ability to direct the use of the rail cars. When the rail cars are not being used to transport Customer's freight, Supplier could use them for another purpose; the rail cars are not available for Customer's exclusive use throughout the term of the contract.

11. Because of the specialised nature of Customer's freight (and consequently the rail cars) and the fact that the rail cars can only deliver benefits to Customer when operated together with an engine, Customer is unlikely to be able to use the rail cars on their own or together with other resources readily available to Customer. The use of the rail cars is an inseparable part of the transportation services requested by Customer. Therefore, Customer has not obtained the right to use the rail cars and the contract does not contain a lease.

Example 1(c)—Approach B: the contract might contain a lease (depending on the pricing of the contract)

Specified asset

12. Same analysis as Approach A—see paragraph 9 above.

Right to control the use of the rail cars

13. Customer does not have ability to operate the rail cars, or direct Freight Supplier to operate the asset, in a manner that it determines—for the reasons set out in paragraph 10 above, Freight Supplier has that right.

14. Customer does not have the ability to control physical access to the rail cars—the rail cars are physically located at Freight Supplier's premises and there is no contractual restriction on Freight Supplier's use of the rail cars when the cars are not being used to transport Customer's freight.

15. Customer is likely to have the right to obtain all but an insignificant amount of the output or other utility of the rail cars because the contract is such that delivery of Customer's freight is expected to require the use of the 10 rail cars over the term of the contract. Therefore, if the pricing of the contract is such that Customer is paying for the right to use the asset, the contract contains a

lease. If the pricing of the contract is such that Customer is paying a per unit price for the transportation services, the contract does not contain a lease.

Example 2: Photocopier

Renter rents a photocopier for three years from Supplier and will pay CU11 for each photocopy made. The photocopier's registration code is included in the contract with Supplier. Supplier can substitute the photocopier but only with the consent of Renter. In practice, the photocopier is substituted only when it is not working properly. Renter specifies that the photocopier must be able to print in colour, staple and sort papers. The contract is non-cancellable. The expected life of the machine is for 5 years. The photocopier is in Renter's premises. (a) Does the contract contain a lease or is it for services? (b) Would the conclusion change if the contract requires that Renter can only use Supplier's services to maintain the photocopier? Maintenance services occur after every 10,000 copies. The photocopy charges include maintenance services. (c) Would the conclusion change if Renter is required to pay a minimum of CU500 per month and, for photocopies made after 100,000 copies, Renter pays CU1 per additional sheet. (d) Would the conclusion change if the photocopier was located in Supplier's premises but is dedicated for Renter's exclusive use?

Example 2(a)—Approach A: the contract contains a lease

Specified asset

16. Fulfilment of the contract depends on the use of the photocopier—the photocopier is explicitly identified in the contract and cannot be substituted without the consent of Renter.

Right to control the use of the photocopier

17. Renter has the right to control the use of the photocopier because:

    (a) it has the right to obtain substantially all of the economic benefits from use of the photocopier throughout the three year term of the contract—

the photocopier is available for Renter's use throughout the term of the contract, regardless of whether it is being used.

(b) it has the ability to direct the use of the photocopier—Renter determines how, when and in what manner the photocopier is used. Renter controls physical access to the photocopier, it can decide who has access to the machine, whether it is moved, for example, to another location, and for what purpose it is used.

Example 2(a)—Approach B: the contract contains a lease

Specified asset

18. Same analysis as Approach A—see paragraph 16 above.

Right to control the use of the photocopier

19. Renter has the right to control the use of the photocopier because it has the ability to operate the photocopier in a manner that it determines while obtaining more than an insignificant amount of the output or other utility of the photocopier. Renter also has the ability to control physical access to the photocopier.

Example 2(b) and 2(c)—Approaches A and B: the contract contains a lease

20. Neither the requirement to purchase maintenance services nor the change in pricing affects Renter's ability to direct the use of the photocopier (Approach A), or Renter's ability to operate the photocopier in a manner that it determines (Approach B).

Example 2(d)—Approaches A and B: the contract contains a lease

21. Approach A: Although the photocopier is no longer located in Renter's premises, Renter retains the ability to direct the use of the photocopier. Specifying the amount, nature and timing of photocopies, in effect, gives Renter the ability to determine how, when and in what manner the photocopier is used—there are no other decisions that could significantly affect the benefit received by Renter. Supplier operates the photocopier according to the instructions of Renter and has no ability to direct the use of the asset for a purpose other than to meet the needs of Renter.

22. Approach B: Although the photocopier is no longer located in Renter's premises, Renter has the ability to direct Supplier to operate the photocopier in a manner that it determines while obtaining more than an insignificant amount of the output or other utility of the photocopier. Because Renter has the exclusive right to use the photocopier, Supplier cannot use the photocopier for another purpose during the term of the contract.

Example 3: Time charter

A 'time charterer' enters into a 'time charter' contract with a shipowner for transportation of cargo services on a named ship for a period of time (eg five years).

The charterer may be chartering the ship either to carry its own cargo or cargos owned by third parties. Under a standard time charter, the charterer pays a daily or monthly hire, based on the market rate at the date of the contract, for the use of the ship and navigation and cargo management services (including the use of the ship's captain, crew and equipment such as the ship's cranes and loading gear) . The shipowner remains responsible for the navigation and condition of the ship. The shipowner pays for all of the operating expenses of the ship, while the charterer pays for the fuel used by the ship, except when the ship is off-hire. The charterer also pays for the port costs.

Under the time charter, the shipowner is responsible for maintenance and overhaul, cleaning services relating to the cargo space and regulatory compliance on matters of ship safety. In addition, the shipowner is responsible for the cargo when it is onboard its ship and for its safe management while the cargo is in its care and custody.

The time charterer determines the cargo to be transported, and the timing and location of delivery (ie the time charterer determines when and to which ports the ship sails). The timecharterer does not pay for hire when the ship is off-hire (ie unavailable for use). The ship might be off-hire for maintenance or repairs, because of unavailability of crew, for safety reasons (weather conditions), etc. The time charterer can declare when the ship is off-hire if the agreed conditions for doing so under the time charter are met. The shipowner pays for the costs of the ship when it is off-hire.

Example 3—Approach A: the contract contains a lease

Specified asset

23. Fulfilment of the contract depends on the use of the ship, which is explicitly identified in the contract. It is unlikely to be practically and economically feasible for the shipowner to substitute another ship for the ship specified in the contract.

Right to control the use of the ship

24. The time charterer has the right to control the use of the ship because:

(a) it has the right to obtain substantially all of the economic benefits from use of the ship throughout the term of the contract—the ship is available for the time charterer's use throughout the term of the contract unless the ship is off-hire. Because the shipowner does not get paid if the ship is off-hire, the shipowner would ensure that the ship is available for the time charterer's use for the maximum amount of time possible during the term of the contract.

(b) it has the ability to direct the use of the ship. Although the captain is an employee of the shipowner, the captain operates the ship according to the instructions of the timecharterer. Specifying the timetable for travel and the destination of the ship, in effect, means that the time charterer determines how, when and in what manner the ship is used. The captain has discretion in operating the ship. However that discretion is generally limited to ensuring that the ship operates safely and properly (eg in adverse weather conditions; damage to the ship; compliance with particular laws; etc.). Accordingly, the decisions of the time charterer about the timing and destination of the ship are those that significantly affect the benefit that it receives from use of the ship—eg the instructions of the time charterer indirectly determine the speed and direction of the ship and mean that, even though the captain is actively operating the ship, it does so according to the instructions of the time charterer. The shipowner retains the majority of the risks associated with ownership of the ship and operates the ship, but does not control its use during the term of the contract.

Example 3—Approach B: the contract contains a lease

Specified asset

25. Same analysis as Approach A—see paragraph 23 above.

Right to control the use of the ship

26. The time charterer has the right to control the use of the ship because it has the ability to direct the shipowner’s captain to operate the ship in a manner that it determines while obtaining more than an insignificant amount of the output or other utility of the ship.

27. Important to note: we understand that, in practice, this conclusion is not always reached and at least some time charter contracts are not considered to contain a lease when applying current guidance (the wording of which is similar to **Approach B**).

Example 4: Drilling rig

> An oil company enters into a contract with a drilling company for the construction of an offshore oil well, constructed in accordance with well design specifications determined by the oil company. The contract specifies the location of the well, and the drilling equipment to be used to construct the well.
>
> The drilling company contracts its work crews and the drilling equipment at daily hire rates, and maintains certified captains and offshore installation managers. Those captains and managers retain ultimate responsibility for the movement or station keeping of the rig and have final decision-making authority over the operations (eg if the operations need to be shut-down for safety reasons). The drilling company's employees operate the drilling equipment and retain all risks associated with that operation.
>
> (a) The drilling equipment is not typically hired to customers without the services of the captain and other crew because of the specialised nature of the construction work and, from the drilling company's perspective, to ensure that the wear and tear on the equipment is not excessive.
>
> (b) What if, the drilling equipment can be hired without the services of the captain and other crew. Other suppliers provide operations services, providing certified captains and crew that operate this type of drilling equipment.

Example 4—Approach A: (a) the contract does not contain a lease; (b) the contract contains a lease

Specified asset

28. Fulfilment of the contract depends on the use of a specified asset. The drilling equipment is explicitly identified in the contract. It is unlikely that it would be practically and economically feasible for the drilling company to substitute other drilling equipment for the equipment identified in the contract.

Right to control the use of the drilling equipment

29. The oil company does not have the right to control the use of the drilling equipment because it does not have the ability to direct the use of that equipment—the drilling company has that ability. The drilling company decides how, when and in what manner the drilling equipment is used by making decisions about the operation and use of the equipment. Although the oil

company specifies the design and specifications of the well (the output from use of the equipment), it has no ability to direct how the drilling equipment itself is used.

30. Example 4(a): Because of the nature of the equipment and the services included in the contract, the oil company is unlikely to be able to use the equipment on its own or together with other resources readily available to it. The use of the drilling equipment is an inseparable part of the well construction services requested by the oil company. Therefore, the oil company has not obtained the right to use the drilling equipment and the contract does not contain a lease.

31. We think that this drilling rig example is analogous to a construction contract for the construction of, for example, an office block. The constructor is likely to use cranes and other large equipment when constructing the building. Depending on the size and nature of the building, those cranes may be on site for several years. We do not think that the customer's design and specification of the building, in and of itself, gives the customer the right to use the cranes and other equipment and, thus, should not result in the construction contract being considered to contain a lease of the cranes and other equipment. Rather, it is a contract for construction services.

32. Example 4(b): Because the drilling equipment could be used by the oil company on its own (ie the oil company could hire the services of certified captains and crew separately), the drilling equipment is separable from the other services provided in the contract. Accordingly, the oil company has obtained the right to use the drilling equipment and the contract contains a lease. In this case, the contract has two elements—the right to use the drilling equipment and services relating to the operation of that drilling equipment.

Example 4—Approach B: the contract is likely to contain a lease (depending on the pricing of the contract)

Specified asset

33. Same analysis as Approach A—see paragraph 28 above.

Right to control the use of the drilling equipment

34. The oil company does not have ability to operate the drilling equipment, or direct the drilling company to operate the equipment, in a manner that it determines—for the reasons set out in paragraph 29 above, the drilling company has that ability.

35. The oil company does not have the ability to control physical access to the drilling equipment—the drilling company ultimately makes all decisions about the use of the equipment, and its employees operates the equipment. The oil company is unable to prevent the drilling company or others from accessing the equipment.

36. Customer is likely to obtain all but an insignificant amount of the output or other utility of the equipment during the construction of the well—the equipment will be used solely to construct the well for the oil company. Therefore, if the pricing of the contract is such that the oil company is paying for the right to use the equipment, the contract contains a lease. If the pricing of the contract is such that the oil company is paying a per unit price for the construction services, the contract does not contain a lease. In our view, the daily rate charged is unlikely to be considered a ‘per unit price’ because it is based on time rather than on the amount of construction work completed.

37. According to this approach, the change from scenario (a) to scenario (b) regarding the separability of the drilling equipment would not change the conclusion.

Example 5: Overseas manufacturer

> A large clothing company (Customer) enters into a contract to purchase sports shirts from an overseas manufacturer (Supplier) for a three year period. The quantity and quality of shirts being purchased are such that Supplier can use only one factory to meet the needs of Customer. Those specifications in the contract are also such that Customer will take all of the output from that factory.
>
> Customer specifies the timing and quantities of shirts to be produced but has no involvement in the operations of the factory used to make the shirts. Supplier makes all decisions about the operations of the factory, including how the machines within the factory are used, whether the factory operates day and night shifts to meet the orders from Customer and who is employed to operate the machines.
>
> Customer pays $10 for each sports shirt purchased, and is required to purchase a minimum of 100,000 shirts in each year.

Example 5—Approach A: the contract does not contain a lease

Specified asset

38. Fulfilment of the contract depends on the use of a specified asset. The factory is not explicitly identified in the contract. Nonetheless, it is implicitly identified because Supplier is unable to deliver the quantity and quality of shirts specified in the contract using any other factory.

Right to control the use of the machines in the factory

39. Customer does not have the right to control the use of the machines in the factory because it does not have the ability to direct the use of those machines—Supplier has that ability. Supplier decides how, when and in what manner the machines are used by making decisions about the operation of those machines. Although Customer specifies the design and specifications of the shirts (the output from use of the machines), it has no ability to direct the process used to make the shirts.

40. Customer is unlikely to be able to use the machines in the factory on their own or together with other resources readily available to Customer. The use of the

machines are an inseparable part of the contract to purchase sports shirts. Therefore, Customer has not obtained the right to use the machines and the contract does not contain a lease.

41. The pricing of the contract does not affect Customer's ability to control the use of the factory.

Example 5—Approach B: the contract is likely to contain a lease

Specified asset

42. Same analysis as Approach A—see paragraph 38 above.

Right to control the use of the machines in the factory

43. Customer does not have ability to operate the machines in the factory, or direct Supplier to operate the machines, in a manner that it determines—for the reasons set out in paragraph 39 above, Supplier has that ability.

44. Customer has no ability to control physical access to the factory.

45. Customer will obtain all but an insignificant amount of the output of the factory because of the quantities of shirts expected to be ordered (and taking into account the minimum quantity to be ordered in each year of the contract). In addition, and because of the minimum quantities that must be purchased in each year, the pricing of the contract is such that Customer is likely to be paying for the right to use the machines in the factory, and not a per unit price for the shirts. Therefore, the contract would contain a lease.

46. The separability of the drilling equipment and the operating services do not affect the conclusion.

Example 6: Power purchase agreement—coal generation facility

An electricity provider (Customer) enters into a contract with the owner of a coal generation facility that produces electricity (Supplier) to purchase all of the power produced by 2 of the 5 generating units within the facility for 5 years. The generating units are specified in the agreement and it is not practical for Supplier to use other generating units to fulfill its obligations under the contract.

Customer determines when electricity is produced, eg it is expected that the generating units will operate mainly during the summer months when demand for electricity is greatest. Customer pays a price that is made up of a capacity charge, an operations and maintenance charge and a charge for coal. The price includes a fixed element that is not linked to the quantity of electricity received by Customer.

Supplier makes all decisions about the input and operation of the generating units in producing the output, eg its employees operates the generating unit in a manner that Supplier determines, and carries out any repairs and maintenance or other procedures necessary to ensure that the generating units operate properly.

(a) Does the contract contain a lease or is it for services?

(b) What if Customer also provides the coal used in the facility and is involved to some extent in making decisions about the operations of the generating units?

Example 6—Approach A: (a) the contract does not contain a lease; (b) the contract contains a lease

Specified asset

47. Fulfilment of the contract depends on the use of a specified asset. The generating units are explicitly identified in the contract, and it is not practical for Supplier to perform under the contract using other sources of power.

Right to control the use of the generating units

48. Customer does not have the right to control the use of the generating units because it does not have the ability to direct the use of those units—Supplier has that ability. Supplier decides how, when and in what manner the generating units are used by making decisions about the input and operation of those

machines. Although Customer specifies the timing and quantity of electricity to be produced (the output from use of the units), it has no ability to direct the process used to make the electricity.

49. Customer is unlikely to be able to use the generating units on their own or together with other resources readily available to Customer. The use of the units are an inseparable part of the contract to purchase electricity. Therefore, Customer has not obtained the right to use the generating units and the contract does not contain a lease.

50. We think that this power plant example is analogous to example 5: overseas manufacturer for which the customer has the ability to determine the timing, quantity and specification of the output, but has no ability to be involved in the input or process used to make the output.

51. In contrast as in example 6(b) above, if Customer provides the coal used in the generating units and is involved to some extent in the operation of those units, Customer has the ability to direct the use of the generating units and the contract would contain a lease. In that case, Customer is not only involved in specifying the output from use of the units. Rather it has the ability to make decisions about the input and process used to make that output. As such, it controls the use of the generating units throughout the term of the contract because it also has the right to obtain substantially all of the potential economic benefits from use of those units.

Example 6—Approach B: (a) and (b) the contract contains a lease

Specified asset

52. Same analysis as Approach A—see paragraph 47 above.

Right to control the use of the generating units

53. Customer does not have ability to operate the generating units, or direct Supplier to operate the machines, in a manner that it determines—for the reasons set out in paragraph 48 above, Supplier has that ability.

54. Customer has no ability to control physical access to the generating units.

55. Customer has the right to obtain all of the output of the 2 generating units. In addition, the pricing of the contract is such that Customer is paying for the right to use the generating units, and not only a per unit price for the power. Therefore, the contract contains a lease.

56. The change in the fact pattern in (b) does not change the analysis.

Example 7: Power purchase agreement—solar plant

An electricity provider (Customer) enters into a contract with the owner of a solar plant that produces electricity (Supplier) to purchase all of the power produced by the solar plant for a period of 10 years. The solar plant is specified in the contract.

Supplier carries out any repairs and maintenance or other procedures necessary to ensure that the solar plant operates properly.

Customer pays a fixed price per unit of electricity produced, however the price per unit varies depending on the year, and the month, that the power is produced.

Incentives for the production of renewable energy (in the form of renewable energy credits) are earned by Supplier as the electricity is produced. The renewable energy credits have significant value and are also purchased by Customer at a per unit price.

(a) Does the contract contain a lease or is it for services?

(b) What if the renewable energy credits were retained by Supplier and sold to another customer?

Example 7—Approach A: (a) and (b) the contract does not contain a lease

Specified asset

57. Fulfilment of the contract depends on the use of a specified asset. The solar plant is explicitly identified in the contract and it is not likely to be practical for Supplier to perform under the contract using other sources of power.

Right to control the use of the solar plant

58. Customer does not have the right to control the use of solar plant because it does not have the ability to direct the use of that plant—Supplier has that ability. The

solar plant requires relatively little intervention or operation after it is built—the most significant input, the sun, being outside of the control of either Supplier or Customer. Nonetheless, any decisions that are required to be taken about the use of the solar plant are determined by Supplier (eg ongoing maintenance). Customer has no ability to influence or be involved in the use of the solar plant—it has the right to any electricity produced by the plant throughout the lease term.

59. In example 7(b), Customer also does not have the right to obtain substantially all of the potential economic benefits from use of the solar plant because the renewable energy credits purchased by another party are considered to be an economic benefit from use of the plant.

Example 7—Approach B: (a) and (b) the contract does not contain a lease

Specified asset

60. Same analysis as Approach A—see paragraph 57 above.

Right to control the use of the solar plant

61. Customer does not have ability to operate the solar plant, or direct Supplier to operate the solar plant, in a manner that it determines—for the reasons set out in paragraph 58 above, Supplier has that ability.

62. Customer has no ability to control physical access to the solar plant.

63. Example 7(a): Customer has the right to obtain all output of the solar plant because it purchases both the power and the renewable energy credits. Nonetheless, the contract does not contain a lease because Customer pays a per unit price for that output.

64. In example 7(b): Customer will not obtain all but an insignificant amount of the output or other utility of the solar plant because the renewable energy credits (that are sold to another party) are considered to be part of the output and other utility of the solar plant, albeit a non-physical output.

Comparison to current practice and feedback on the guidance in the ED

65. We understand from respondents to the ED that there is diversity in practice on both of the following:

    (a) Example 7(a): some view the pricing of the contract as being ‘contractually fixed per unit of output’ and would conclude that the contract does not contain a lease. Others view pricing that is not the same fixed amount for each unit of output as failing the ‘contractually fixed per unit of output’ criterion in current guidance. Therefore, they would conclude that the contract contains a lease.

    (b) Example 7(b): some view renewable energy credits as part of the ‘output and other utility’ of the asset and, similar to **Approach B**, would conclude that the contract does not contain a lease. Others interpret ‘output and other utility’ to exclude such non-physical output from the use of an asset. Therefore, they would conclude that the contract contains a lease.